Stolen Past: Shattered Futures
Aboriginal Justice In Canada

by:
Catharine L.L. Crow

Submitted in partial fulfillment of
the requirements for the degree of
Masters of Arts

Department Of Politics
Judicial Administration
Brock University
St. Catharines, Ontario

Acknowledgments

I would like to take this opportunity to express my appreciation to those who have assisted me as interviewees or assisted in the organization of my research. A special thanks to the RCMP who provided much of my transportation in Northern Manitoba, the court staff of Manitoba and Ontario, and to the Aboriginal peoples of Northern Ontario and Manitoba without whom this thesis would not have been possible.

In addition, I would like to thank Dr. Carl Baar, my primary advisor for his assistance and patience throughout the process of writing this thesis.

Secondly, a very special thanks to Dr. Ann Duffy, who took time out of her very busy schedule to "fill in" as second reader of my thesis. Your sacrifices made at such short notice and your support have not gone unnoticed.

I would also like to offer a heart felt thanks to Dr. Dan Glenday who not only supported me and offered sound organizational advice but who also graciously offered the use of his office and his computer throughout the thesis process.

Also, a special thanks to both Nick Larsen and Barb Magee who were the unfortunate recipients of much of my frustrations but who supported my efforts with patience and understanding.

Finally a word of thanks to my friends and family who continually offered their encouragement and sympathy.

Abstract

It is acknowledged that Canada's criminal justice system has some major flaws, particularly with respect to its application to various ethnic subgroups. Aboriginal Canadians are one subgroup particularly sensitive to the problems in the system as is reflected by their disproportionately high rates of criminality and incarceration.

Over the past 50 years many programs have been developed and recommendations have been made to alleviate the tensions Aboriginals find within the system. However, the situation today is essentially the same. Aboriginals are still overrepresented within the system and solutions that have been brought forward have had little success in stemming their flow into the system.

Blame for Aboriginal mistreatment in the system has been placed at all levels from line police officers to high-level officials and politicians and attempts to resolve problems continue as an on going process. However, many of the recommendations and reforms have revolved around culture conflict. Although this thesis recognizes the importance of culture conflict in the overrepresentation of Aboriginals within the Canadian criminal justice system, it has also recognized that culture conflict alone is not responsible for all the flaws within the system as it pertains to Aboriginals.

This thesis is of the opinion that in order for reforms to the criminal justice system to be successful, the context in which the system is operating must also be considered. Variables such as geographic isolation, economic disparity and social/political stability are viewed as operating in conjunction with culture, ultimately influencing Aboriginal treatment within the system.

The conclusions drawn from this study confirm that when these factors operate together, the overrepresentation of Aboriginals within the Canadian

criminal justice system is inevitable. Thus all three variables, culture conflict (social/political stability being part), geographic isolation and economic disparity must be address within the system if any significant changes in the crime rates or incarceration rates of Aboriginals is to be expected.

In addition, primary research indicated the influence of cooperation as a factor in moderating the effects of criminality; not just cooperation among Aboriginals and non-Aboriginals, but also cooperation among differing Aboriginal communities. It was argued that when all these issues are addressed, Aboriginal peoples in Canada will have the strength to repair their shattered futures.

Aboriginal Justice: Table of Contents

APPENDICES

Stolen Past: Shattered Future

Aboriginal Justice In Canada

Introduction

Chapter 1: Introduction

It is generally acknowledged that the Canadian criminal justice system has major flaws in its application to Canada's Aboriginal groups. The problems experienced by Aboriginal peoples in Canada have historically been evidenced by their disproportionately high rates of criminality and incarceration. In 1991, about 12% of the inmate population in federal correctional institutions (housing offenders sentenced to terms of two or more years) were Aboriginal. The inmate population in provincial institutions (housing offenders with terms of less than two years) was 15% Aboriginal. Considering the fact that Aboriginals represent only 3.6% of the overall Canadian population, these figures are alarming.[1]

A.C. Hamilton and C.M. Sinclair, in the Report of the Aboriginal Justice Inquiry (AJI Report), found that Aboriginals in Manitoba were more likely to be charged with multiple offences and were over twice as likely to be incarcerated upon conviction than were non-natives (25% of Aboriginals received sentences of incarceration compared to 10% for Non-Aboriginals).[2] They also found that Aboriginal offenders were denied bail and held in custody pending trial more frequently than non-aboriginal defendants. The magnitude of the problem is exacerbated by the fact that Aboriginal defendants were more likely to plead guilty at their first appearance (60% of the cases compared with 50% for non-Aboriginals),

---

[1] Griffiths, Curt & S.N. Verdun-Jones, Canadian Criminal Justice 2nd Ed. (Toronto: Butterworths, 1993) p. 633-43.

[2] Perhaps most startling, 20% of Aboriginal females received sentences of incarceration for their offenses compared to 4% of the non-Aboriginal population. While part of the explanation for this discrepancy may be attributed to the fact that Aboriginal women commit more serious crimes than non-Aboriginal women, it is also likely that Aboriginal women don't benefit as much from judicial paternalism as non-Aboriginal women.

often because they did not fully understand the process.[3] These figures can be placed in perspective when one realizes that, although Aboriginal people have crime rates 1.8 times the national crime rate, their offences are heavily concentrated in minor offences such as theft under $1000.00 and public mischief. Further, their violent crime rate, while 3.5 times the national average, is predominantly alcohol-related and concentrated in the category of family violence.[4]

This situation has focused political attention on the over-representation of Aboriginal people in the criminal justice system, and over the past 50 years many attempts have been made to develop responses to alleviate the problem. However, the situation today is essentially the same: Aboriginal peoples are still over-represented in criminal justice statistics, and the solutions that have been attempted have been largely unsuccessful in stemming their flow into the system.

PURPOSE OF THESIS

Many reports and researchers have argued that the lack of success experienced in policy initiatives[5] with regard to Aboriginal justice is largely because the programs have been "band-aid" solutions which have not significantly reduced the culture conflicts which Aboriginals face within the system. In this respect, James C. MacPherson, former Dean of Osgoode Hall Law School,[6] argues that:

---

[3] Hamilton A.C. & C.M. Sinclair, Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People, Vol.I (Winnipeg: Province of Manitoba, 1991) pp. 87-88.

[4] Ibid.,p.87-89.

[5] See Appendix A for a brief overview of some of the key recommendations put forward by various reports and Appendix B for an overview of some of the programs initiated.

[6] James C. MacPherson is presently an Ontario General Division Judge.

> The principal reason for this crushing failure [re: Canadian criminal justice system] is the fundamentally different world view between European Canadians and Aboriginal peoples with respect to such elemental issues as the substantive content of justice and the process for achieving justice.[7]

Culture conflict between Aboriginals and Non-Aboriginals is evident at every stage of the criminal justice system from policing to incarceration. Rupert Ross, a crown attorney in Kenora, Ontario, argued:

> We in the mainstream culture remain largely ignorant of the fact that Native people--and Native communities--operate under a scheme of ethical commandments which vary significantly from our own.[8]

These differing ethical commandments (cultural norms) have resulted in a great deal of misunderstanding between Aboriginal peoples and the Canadian criminal justice system. The result of this conflict has been that behaviours which are appropriate and the norm in Aboriginal communities are seen as negative responses to authority and justice when the two cultures meet. One such example is the issue of eye contact. Most Euro-Canadians have been conditioned to believe that someone who will not look you straight in the eye is demonstrating evasiveness. In other words, they suspect they are being lied to. When we wish to demonstrate sincerity, direct eye contact is paramount. In some Northern reserve communities however, to look someone straight in the eye is a

---

[7]MacPherson, James C., "Report from the Round Table Rapporteur", Aboriginal Peoples and the Justice System (Ottawa: Ministry of Supply and Services Canada, 1991) p.4.

[8]Ross, Rupert, "Leaving Our White Eyes Behind: The Sentencing of Native Accused," Canadian Native Law Reporter 3:1989 p. 1-15.

deliberate sign of disrespect.[9] The implications of such culturally defined behaviour in the courtroom can be disastrous to the Aboriginal accused.

Misunderstandings such as this have often led to overt and covert discrimination against Aboriginal peoples which has in turn lead to abuse of discretion and ultimately to the miscarriage of justice. The mistaken conviction of Donald Marshall, Jr. is a case in point.[10] Following Donald Marshall's eventual exoneration, the Royal Commission on the Donald Marshall, Jr., Prosecution (1989) determined that not only had the criminal justice system failed Donald Marshall, Jr. at every point from his arrest and conviction up to and beyond his acquittal by the Supreme Court of Nova Scotia, but the fact that Marshall was Aboriginal contributed to the miscarriage of justice.[11]

Blame for Aboriginal mistreatment in the system has been placed at all levels from line police officers to high-level officials and politicians, and attempts to resolve the problems are part of an on-going process. The problem however is more complex than cultural differences alone. While it is true that culture conflict contributes directly to the over representation of Aboriginal peoples within the system, it is also true that attempts at alleviating culture conflict by way of Amerindian police forces[12], recruitment of Aboriginal constables and attempts by courts to

---

[9] Ibid., p.146.

[10] Refer to Appendix (C-3) for a complete summary of the Donald Marshall Case.

[11] Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues.(Ministry of Supply and Services Canada, 1993).p. 17.

[12] It should be noted that in the United States, writers often distinguish between community-based and Amerindian police forces. Amerindian police forces are staffed by Aboriginal persons and are controlled directly by Aboriginal Bands. Community police forces are staffed by Aboriginal persons but are largely controlled by outside forces. However, this distinction is rarely used in Canada and the term "Amerindian" police will be used to denote all tribally affiliated police forces which police reservations exclusively.

integrate Aboriginal values have had little influence on Aboriginal incarceration rates.

The question then becomes why have there been so few inroads with respect to Aboriginal overrepresentation within the criminal justice system despite reforms to alleviate cultural differences? The answer is complex in its simplicity. Culture conflict does not stand alone in its influence. In order to fully understand the issues leading to Aboriginal overrepresentation within the criminal justice system and the corollary failure of reforms to alleviate the problem, one must look at the the context in which the system and the culture is operating. Variables such as geographic isolation, economic disparity, and social/political stability operate in conjunction with culture, each impacting the other and ultimately influencing Aboriginal treatment within the system. This is not to say that each of these issues in isolation has not contributed to Aboriginal overrepresentation. However, the conflicts that occur when these issues operate together not only provide a more accurate picture of the injustices and the inequality of Aboriginal treatment but also illuminate the difficulties facing administrators in their attempts to rectify the existing problems. The purpose of this thesis then, is first to address the issues of culture conflict, geographic isolation, and economic disparity in terms of the social dynamics that emerge based on these variables and their impact on the institution of justice, specifically policing and courts services. Secondly, the thesis will evaluate the impact of these three variables in terms of physical barriers that make justice inaccessible to many northern Aboriginal communities.

RESEARCH METHODOLOGY

The goal of this research is to ascertain the effects of culture conflict, geographical isolation and economic disparity on the administration of justice in Northern Ontario and Northern Manitoba as they pertain to Aboriginal peoples.

Both qualitative and quantitative methods were used. The basic reason for the use of both methods of analysis is that each method has its own unique qualities that lend themselves to the research in question. Qualitative analysis allows evaluation of personal opinions and experiences of individuals who have had some interaction with the criminal justice system. Quantitative analysis on the other hand allows for more general population standards to be developed.[13] Quantitative analysis of ethnic groups such as Aboriginal peoples however is often unreliable. It must be remembered from the onset that aggregate statistics, regardless of their origin, are subject to error. It is for this reason that both quantitative and qualitative data have been collected. The researcher used the quantitative data in conjunction with the qualitative data obtained through interviews and questionnaires and the literature review.

QUALITATIVE RESEARCH

Two methods were used in the collection of qualitative data for this study, interviews and a questionnaire. Interviews were held with a diverse selection of Aboriginal individuals and both Aboriginal and non-Aboriginal professionals within the criminal justice system. The interviews with Aboriginal persons tended to take the form of group

---

[13]For a more substantive view of the differing characteristics of qualitative and quantitative research see Ted Palys, Research Decisions: Quantitative and Qualitative Perspectives, (Toronto: HBJ, 1992), pp. 3-15.

interviews (two or more persons per interview) whereas the interviews of professionals were conducted on a one-to-one basis.

Another method employed was the use of a questionnaire (See Appendix D,E). The open-ended questions on the questionnaire acted as a frame of reference for the interviews with Aboriginal peoples. Questions that were directed toward professionals were broad and geared toward their personal experiences with Aboriginal peoples and their work in the North with respect to the Canadian criminal justice system.

The interviews were conducted in a rather unstructured manner so as to provide an informal, relaxed atmosphere between the researcher and the subject(s) so that conversation rather than a formal interview could take place. In this way, any discomfort on the part of the subject was alleviated, while at the same time, a free flow of information was possible.

This study involved a relatively small but broad sample. Study areas were selected on the basis of convenience. In Northern Manitoba for example, areas were determined by the flight schedules of the court planes and the RCMP plane (spanning the entire northern area). Interviews in Manitoba took place during two weeks in mid-August, 1993. Two interviews were also conducted at reserves accessible by road with the approval of community leaders and two were conducted in the northern town of Thompson, Manitoba. (Exact reference to areas has been withheld at the request of some of the interview subjects.)

In Ontario, interviews were concentrated within the Northwest area of the province. However, 30 questionnaires were sent out to other areas in an effort to obtain a broader base of northern Ontario data.[14]

All of the Aboriginal respondents were unknown to the interviewer and most of the professional respondents were unknown. Those professionals who were known were acquaintances and not close friends or relatives.

The researcher attempted to get a cross-section of the actors within the criminal justice system spanning convicted offenders to judges. In this way, a clearer picture could develop with respect to the variables under investigation (regional isolation, culture conflict, and economic disparity) and their subsequent relationship to the criminal justice system.

---

[14]It is interesting to note that 87% (26/30) of the questionnaires were returned. In addition, a few questionnaires were returned unanswered but accompanied by an apology or a reason for not completing it. No questionnaires were returned simply unanswered. One individual contacted the researcher by phone asking if, due to a conflict of interest, she could pass on the questionnaire to another member of the community.

Individuals Interviewed:

Manitoba	**Ontario**
Aboriginals on *(Remote)* Reserves 2-groups of three 1-group of four 2-groups of two (each group from a different reserve)	Aboriginals on *(Urban)* Reserves 1-group of four *(Remote)* Reserve 1-group of three 26-returned questionnaire
Aboriginals off Reserves 1-group of one 2-groups of five	Aboriginals off Reserves 1-group of five
Royal Canadian Mounted Police Five individuals of various rank	Royal Canadian Mounted Police 2- individuals of various rank
Aboriginal Band Constables 1-group of one 1-group of two	Ontario Provincial Police 3-individuals
Crown Counsel 3-individuals	OPP band constables/workers 2-individuals
Defence Lawyers 2-individuals	Crown Counsel 1-individual
Provincial Court Judges 2-individuals	Defence Lawyers 1-individual
Court of the Queens Bench Judges 2-individuals	General Division Judges 1-individual
Aboriginal Court Workers 3-individuals	Provincial Court Judges 1-individual
Medical Expert on Family/Child Abuse 1-individual	Aboriginal Court Workers 1-individual

Two problems emerged during the course of the interviews. First, there was a reluctance on the part of both professionals and Aboriginal peoples to submit to an interview unless their identity was protected. Because many reserves are small and judicial districts in the north are few in number, an agreement was made to refer to respondents in terms

of: an RCMP officer in northern Ontario or an Aboriginal from northern Manitoba, and so forth.

Second, because of time constraints experienced by some professionals, the interviews were often interrupted. If the scope of the interview had not been completed to the satisfaction of the researcher, a second meeting date was established to complete the interview. In addition, due to flight schedules into various communities, it was often difficult to schedule more than one interview per location with Aboriginal persons. In this instance group interviews were found to be quite efficient. Group interviews also had the added advantage of putting the respondents at ease thus allowing for a free flow of information. The interviews were held in a variety of locations. For the professionals who were unconcerned about their identity being known, interviews were most often conducted in their offices, police detachment, on a plane, or in court offices. For those concerned about others in the work force identifying them as speaking with the interviewer, interviews took place in public restaurants, the subject's place of residence or the researcher's hotel room.

In most cases, the interviews were recorded using a small battery operated, voice activated tape recorder. If the interview was interrupted for a short period of time, the recorder was shut off, then reactivated as the interview continued. If on the other hand the interview was to continue at a later date, a fresh tape was used.

In one instance involving a group interview, one of the respondents consented to having her name used. However, the remaining two did not. Because it is difficult to differentiate voices via tape recording, no names were used in this instance.

On three occasions individuals were perceived as being very uncomfortable by the use of a tape recorder. In these cases written notes were taken in lieu of tape recording (this was determined to be acceptable by the subjects).

An interesting development in this research methodology was the uneasiness felt by the subjects in discussing their experience and/or perceptions of the criminal justice system. This phenomenon held true for both professionals and Aboriginals alike.[15] Thus, every effort has been made to maintain the subjects' anonymity unless otherwise specified.

In addition, several professionals who are accustomed to public speaking and media relations tended to provide what appeared to be a "standard press release" response to the questions asked. One individual in particular, after being told the focus of the research, picked up the tape recorder and proceeded to lecture uninterrupted for approximately twenty minutes without any need for prompting by the researcher. Although the information received was informative, personal impressions were greatly censored. This was also quite often the case with higher ranking officials within the criminal justice system.

To summarize then, the qualitative method of study was used for its greater validity and depth in researching the rather nebulous area of personal opinion and evaluation of the criminal justice system. The instruments used were personal one-on-one and group interviews, as well as a mailed questionnaire sent out to Aboriginal peoples throughout northern Ontario. Questions in both were designed to be open for discussion and to elicit the subject's evaluation of the criminal justice

---

[15]some professionals were concerned their opinions would become "public knowledge" and were concerned that such a situation would negatively effect their work environment.

system. Every effort was made to ensure the anonymity of the subjects. Both men and women were interviewed and both lay people and professionals were interviewed. Persons were interviewed in locations that they felt to be most comfortable and/or most convenient.

Despite some problems, a wealth of information was accumulated and a greater understanding of the impact of regional isolation, economic disparity and culture conflict was attained.

QUANTITATIVE RESEARCH

In order to substantiate the qualitative data obtained from the interviews, aggregate statistics were collected from Statistics Canada, the Canadian Centre for Justice Statistics and the Department of Indian and Northern Affairs to test perceived differences between Aboriginal Canadians and non-Aboriginal Canadians with respect to the variables of regional isolation and economic disparity. Demographic and social statistics were accumulated and presented in charts and graphs, then in terms of their relationships with the focal variables in this study.

Regional isolation was determined based on figures obtained from Indian and Northern Affairs Canada, Basic Departmental Data,1990. Classifications for Canada based on these data include:

Urban:	reserves within 50 Km. of a service centre
Rural:	reserves between 50 Km and 350 Km from a service centre
Remote:	reserves beyond 350 Km yet with road access
Special Access:	any reserve where no year-round road connects to a service centre.

Remote and special access areas were then combined because in the majority of northern communities, the type of service and the expense attached to that service is the same for both categories. Reserves beyond 350 Km from a service centre are still accessed by plane and experience the same difficulties as those that have no road access.

Data were then further broken down into provincial regional areas using the "Distribution of Bands by Population Size" along with "Distribution of Bands by Geographical Location". It was then possible to estimate the approximate number of Aboriginal peoples in Ontario and Manitoba who are classified as remote. This information was then cross referenced to Statistics Canada data on income levels for Aboriginal peoples in Canada as a whole in addition to levels in Ontario and Manitoba. Income levels were then compared to Aboriginal incarceration rates obtained from the Canadian Centre for Justice Statistics to determine the impact of income on incarceration rates. Comparisons were also made of the impact of ethnicity, Aboriginal/Non-Aboriginal, and geographic location.

It is important to note however that statistics obtained from these various source often differ in actual numbers. Statistics Canada itself suggests that data accumulated is subject to errors.[16] In addition, availability of recent data based on geographic location was restricted due to library resources.

Thus, at best these statistics can indicate patterns that are evident within Canada's criminal justice system, at worst, any valid interpretation is impossible. However, due to the great scarcity of ethnic

---

[16]Statistics Canada, 1991-Cat.No 89-534, Schooling, Work and Related Activities, Income , Expenses and Mobility: pp.304-305.

data available in Canada, these sources of data are the only ones that can be used. It is recognized that any interpretations based on these data must be viewed cautiously. Because much of the data obtained were not directly comparable, further statistical analysis was not possible.

CONTENT OF THESIS

In successive chapters, this thesis will examine culture conflict, economic disparity and geographic isolation as possible causes of the inequalities Aboriginals face within the Canadian criminal justice system. It is also the intention of this thesis to demonstrate that although each of these factors tip the balance of equality against Aboriginal peoples, when combined they produce a web of hardship that cannot be resolved simply by repairing one strand.

Following this introductory chapter, chapter two will provide definitions of culture (ethnic, community and legal culture) and explore the realities of culture conflict between Aboriginal peoples and the Non-Aboriginal criminal justice system. Culture conflict will be explored in terms of the psychological barriers it creates within the justice system as well as the physical barriers it creates in terms of access to justice.

Following this discussion will be an analysis of the socio-economic influences on the criminal justice system. Chapter three will discuss the influence of economic disparity and geographic isolation on both the access to justice and as a contributory factor in Aboriginal criminality. In addition, geographic isolation will be discussed in terms of its combined influence with economic disparity and culture conflict.

The following chapter, chapter four, begins the discussion of the variables' influence on criminal justice institutions, specifically policing and courts. Chapter four will discuss police response to Aboriginal

criminality, situations that develop based on the variables of culture conflict, geographic isolation and economic disparity, and the success or failure of policing initiatives.

Chapter five addresses these same variables in conjunction with courts and case processing. The success or failure of circuit courts and autonomous community based court systems will be discussed.

Recently completed field research on how the above factors influence the administration of justice in northern Aboriginal communities in Ontario and Manitoba has been integrated within each chapter of this thesis.

The final chapter will summarize the data and arguments presented in this thesis focusing on northern Ontario and Manitoba and will relate them to policy recommendations based on incremental change and total change of the present criminal justice system. The last component of chapter six will provide recommendations for policy change in consideration of culture conflict, geographic isolation, economic disparity and the associated difficulties they present in policy formulation and implementation.

Chapter 2: Culture

Chapter 2: Culture

In its most basic sense, "culture is the symbolic and learned, non-biological aspects of society, including language, custom and convention, by which human behaviour can be distinguished from that of other primates".[17] From a sociological perspective, culture is viewed as incorporating "the total set of beliefs, customs or way of life of a particular group which is most commonly presented in terms of common belief systems or systems of values".[18] When differing groups maintain beliefs and values which are alien to one another misunderstanding and hence conflicts are bound to arise.

The institution of justice is one area in which differing group values overlap. When these differing values and beliefs are not understood by those administering justice, equality of justice can be compromised.

Justice epitomizes the beliefs and values of the society in which it operates. In the broadest sense, the justice system in Canada reflects "Canadian" beliefs and values. These values however are those of the Canadian (non-Aboriginal) majority. This often poses a problem for minority cultural groups (aboriginals) that do not understand the cultural subtleties of the majority. When cultural tendencies are not understood or known to justice administrators, mistakes in judgements can occur.

Culture however is not limited to ethnic divisions. For example, in the Canadian north, cultural issues can be seen as occupying three planes: general Canadian culture, incorporating the norms and values of the Canadian majority; community culture, where isolation and small

---

[17] Abercrombie, N. et al., Dictionary of Sociology, New Edition (London: Penguin Books, 1988) p. 59.

[18] Ibid., p. 59.

populations encourage community cohesion; and ethnic culture where language and traditional norms and values of Aboriginals stand in stark contrast to "Canadian" culture. The Canadian justice system in the north is influenced by all three of these cultural levels, each of which inflict their own demands and provide their own obstacles to equitable justice.

IMPACT OF COMMUNITY CULTURE

Justice is a concept that is inextricably tied to the community in which it operates. Every community has over time developed a unique set of beliefs and values that can be argued to constitute a community culture.[19] This culture, based in the community, is reflected by the views, beliefs, values and morals of the citizens therein. The depth of community culture often depends on the environment in which it operates. For example, in large metropolitan areas, the sense of community often does not extend beyond the confines of a given neighborhood; whereas in a remote rural area, community may refer to an entire town or a reserve housing several thousand people. The key however is the notion of shared beliefs and values. When all members of a community share a value system, the society runs smoothly. If however external values are forced on the community, a sense of unfairness or inequality emerges.

In Northern Canada the large geographical area results in many isolated communities. This places a great demand on the justice system. There are simply not enough resources available to provide each and every northern community with its own justice system or service centre[20]. Thus, most communities are served by a centre far removed from the

---

[19]For more information on the emergence of community culture see The Meaning of the Built Environment: A Nonverbal Communication Approach, by Amos Rapoport, (Tucson: University of Arizona Press, 1990) pp.59-69.

[20]Service center refers to the nearest community which houses the administrative networks of the area, i.e. hospitals, police, courts, shopping, etc.

community itself. It is generally these exterior service centres that house the operating bases for the criminal justice system including courts, law offices, probation offices and policing.

LEGAL CULTURE

Because the system of justice is separate and apart from the community base, a separate sub-culture develops among the actors within the system. Actors within the justice system cannot help but be drawn into the "local legal culture"[21] in which they work. Police, lawyers, judges, court personnel and corrections officials must work in a closeted environment with one another which inevitably leads to a cultural orientation (shared beliefs and values) within that environment. Where justice systems are closely integrated within the community, the norms and values perpetuated by the legal system tend to be better understood. This is not to say that the community itself assumes or is absorbed into the legal sub-culture of the professionals within the system. Rather, the community members are more aware of the judicial operations and may even know the actors within the system, thus offering the possibility of familiarity. This familiarity in turn increases the comfort level between the two differing groups and allows for better communication. Ultimately, a sense of trust and security can develop. This has been the underpinning of many reform recommendations in policing. Community

---

[21] Local legal culture is a catch phrase that reflects the environment within which the judicial process operates. For a general description of legal culture, see Wesley Pue and Barry Wright in Canadian Perspectives on Law and Society: Issues in Legal History (Ottawa: Carleton University Press, 1988), pp.57-60. For how "local legal culture" influences court operations see, Justice Delayed: The Pace of Litigation in Urban Trial Courts, by Thomas Church, Jr., (Williamsburg,Virginia: National Center for State Courts, 1978), pp.61-62.

based policing has as its goal the reduction of alienation between police and the communities they serve.

Geographic considerations (such as the need for fly-in circuit courts) and the lack of community services play a role in the way the local cultures develop. Citizens in these situations often comment that there are in fact two coherent small groups, one consisting of the citizens and another consisting of the legal authorities. When the local legal culture of those in control of the justice system is at odds with the local culture of the community it serves, problems with conflicting beliefs and values are bound to emerge. If however, these cultures are further differentiated by ethnic differences, the possibilities for injustices to occur are greater still.

This type of situation was evidenced in the murder of Helen Betty Osborne in The Pas, Manitoba.[22] Helen Betty Osborne, an Aboriginal, had moved from her reserve community to The Pas to attend school. The non-Aboriginal community in the Pas and to some extent the police community had the belief that Aboriginal peoples were inferior and deserving of less respect than that given to non-Aboriginals.[23] Following Helen Osborne's murder, many people in the town learned the identity of the murderers within a very short time, however "...because Osborne was an Aboriginal person, the townspeople considered the murder unimportant".[24] The result was a sixteen-year delay in bringing the case to trial. The Aboriginal Justice Inquiry Report concluded that,

---

[22]For a full summary of the Helen Betty Osborne Case, see Appendix C-2.
[23]Hamilton A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People, Vol. 1. p.3.
[24]Aboriginal Justice Inquiry Report, Vol. 1. p.3.

> Those who abducted her showed a total lack of regard for her person or her rights as an individual. Those who stood by while the physical assault took place, while sexual advances were made and while she was being beaten to death showed their own racism, sexism and indifference. *Those who knew the story and remained silent must share their guilt.* [25]

Because most Aboriginal communities are isolated both culturally and geographically there is often little possibility for the Aboriginal cultures to merge with neighbouring cultures.[26] This holds true for both other Aboriginal communities and non-Aboriginal communities. This isolation has on the one hand allowed many Aboriginal communities to maintain their traditional cultural traits, however it has also contributed to the uniqueness of each community. Every Aboriginal community has a unique set of beliefs and values that have developed independent of neighbouring communities. This however does not negate the fact that there are some cultural similaries among Aboriginal groups. Yet, the greatest culture gap however remains between Aboriginals and non-Aboriginals; conflicting world views have led to misunderstandings often resulting in prejudicial attitudes and racism.

Racism is basically defined as the "determination of actions, attitudes or policies by beliefs about racial characteristics".[27] Racism however can be either overt and individual, involving individual acts of oppression against an ethnic group, or it can be covert, as in the case of

---

[25]Ibid., p.98.

[26]This is not to say Aboriginals never leave their home communities for urban centers, it is also understood that Aboriginals do receive and enjoy the communication systems of other Canadians (television, radio, music, videos etc.) The point made here is that there is rarely any long term association which will promote the merging and sharing of belief and value systems.

[27]Abercrombie, Nicholas et al., Dictionary of Sociology, (Markham: Penguin Books, 1988).p.201.

Helen Betty Osborne mentioned earlier. Covert racism is generally institutional, involving structured subordination. When racism manifests itself within an institution such as the criminal justice system, racial inequality is inevitable and access to that institution is denied.

INSTITUTIONAL RACISM AND CULTURE CONFLICT

Institutionalized racism has its base in the misunderstanding that evolves between differing cultures because of a reciprocal lack of knowledge of one another, be they legal cultures or community cultures. Institutional racism with respect to the criminal justice system emerges when the legal culture of a given institution is at odds with or conflicts with the local culture of the community it serves. Indeed, a major problem arises when the racism has become so ingrained in the operating patterns of criminal justice agencies that it is beyond the awareness of those who practice it. Over time, it is possible that discriminatory conduct becomes so subtle that officers and citizens no longer notice that their discriminatory attitudes are influencing their conduct. Thus even when attitudes influence behaviour, it is difficult to detect. Yet, it is also difficult to substantiate accusations of discriminatory behaviour and almost impossible to eradicate it without changing the entire belief and value system within which the agency operates.

One clear example of institutional racism as it effects Aboriginal peoples is the "accidental" shooting of J.J. Harper in Winnipeg, Manitoba. J.J. Harper was confronted by police specifically because he was Aboriginal. He did not bear any physical resemblance to the description of the suspects that were being sought, other than being Aboriginal. In addition, evidence was uncovered to suggest that Robert Cross, the officer

involved, was aware that the suspects had already been taken into custody by other officers when he stopped J.J. Harper.

> Cross [the officer involved] for one reason or another, ignored other particulars of the description of the suspect, seizing on the word 'native'. He stopped the first Aboriginal person he saw, even though that person was a poor match for the description in other respects and a suspect had already been caught.... Racial stereotyping motivated the conduct of Cross. He stopped a "native" person walking peaceably along a sidewalk merely because the suspect he was seeking was native.[28]

The day following J.J. Harper's death, the police department exonerated Robert Cross despite a multitude of unanswered questions and discrepancies. Although Cross maintained that J.J. Harper had been shot when he attempted to grab his (Cross's) service revolver, the fact that the Winnipeg Police failed to check the conflicting evidence before exonerating Cross suggest that they felt that the death of an Aboriginal leader did not warrant an extensive investigation or immediate action. Robert Cross has never faced criminal or internal disciplinary charges for his role in Harper's death.

This scenario tends to suggest that the reason for initial contact was based on preconceptions of Aboriginal behaviour. Robert Cross's assumption that J.J. Harper was a suspect despite no obvious physical similarity between him and the suspect's descriptions broadcast on the police radio, in conjunction with police behaviour following J.J. Harper's

---

[28]Hamilton A.C. & C.M. Sinclair, Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People. Vol. 1. p. 94. For a complete summary of J.J. Harper's case, see Appendix C-1).

death, highlights the racism that permeated the Winnipeg police Department at the time.

Community culture however does not have to be racist to impact on the justice system. The very fact that differing cultures have different belief and value systems can present obstacles to justice. In northern Canada, many of the communities, particularly reserve communities, are isolated to an extent that very little interaction between communities occurs. This is true regardless of the ethnicity of that community. A consequence of the isolation is that many of the legal professionals maintain close friendly associations with one another. For the non-professional, this familiarity is often viewed in terms of a bias toward equality of justice. It is suspected by the outsider that impartiality is compromised by these close associations.

Community cultures therefore regardless of ethnic orientation can have a substantial impact on access to the criminal justice system and thus must be considered or at least recognized in the formulation of corrective policy. When the community cultures are further separated by ethnic cultural differences, the demands on the criminal justice system increase.

IMPACT OF ABORIGINAL ETHNIC CULTURE

It must be recognized that Canada's Aboriginal peoples lived in North America hundreds of years prior to contact with Europeans. During that time they had developed complex governing systems, communication systems and their own set of beliefs and values.

Aboriginals subscribe to what can today be described as a holistic world view, a view in which all activities of the community and the individual are intertwined. Law, punishment, religion, politics and leisure,

are one and the same and each of equal value or importance. The preservation of order in traditional Aboriginal culture involved the total participation of members of the community in the resolution of conflicts, reflecting a "horizontal"[29] process consistent with a holistic world view that resulted in the participation and consent of the community at large.[30]

This world view is in many respects intact today. To the Aboriginal, crime is seen as a violation of one person by another, thus disrupting the natural harmony within the community. The understood focus for the Aboriginal community then, is on problem-solving and restoration of harmony. Harmony is achieved by way of dialogue and negotiation. Implicit in this practice however is the absence of notions of guilt or blame, the ultimate goal being the re-establishment of balance between the individuals and within the individuals themselves. Restitution and reconciliation are understood to constitute the means to restore the breakdown of harmony.

Justice then, is viewed in terms of the right relationship and balance which leads to harmony. The community as a whole plays an important role in the maintenance of this balance and acts as a facilitator in the restorative process. Rather than punishment of the offender as an individual, the offender is impressed with the impact of his actions on the total order of the community. The holistic context of an offence is taken into consideration including moral, social, economic, political, and religious aspects. The violator is then encouraged and supported by the community in his efforts at self healing. However, as is often the case,

---

[29]"Horizontal" referring to the equality of power within the community with respect to negotiations and input.

[30]Coyle, M. "Traditional Indian Justice in Ontario: A Role for the Present?" Osgoode Hall Law Journal, 24 (1986), p. 605.

the actual offence is never mentioned and no concrete decision by our standards has been made. Rather, a consensus is usually obtained by an osmosis of information until all involved come to an individual understanding of the issues and the course of action if any is decided, without actually voicing that decision. This approach to law and order sits in drastic contrast to our Euro-Canadian definition of law and order.

The Euro-Canadian view of justice includes aspects of what is referred to as a retributive model of justice. In this view, crime is an act against the state and acts of violence and/or destruction are not directed toward individuals by individuals, but rather as an attack by an individual against the state as a whole. This ideology is based on the assumption of authority and hierarchy with the state represented by a government. Justice is determined in relation to the actions of the accused (in terms of his/her disregard of the legislation which represents the state) and the laws which prohibits that action.

The issue of guilt is established through an adversarial relationship between the offender (through his defence counsel) and the state (through a prosecutor, i.e. crown attorney). When conflicts arise, it is through argument and questioning that blame or guilt is established, with remorse, restitution and forgiveness playing only a marginal role. Once guilt is established, punishment is used to deter and/or prevent further unacceptable behaviour. In this interpretation of guilt, action revolves around the offender and his/her relationship with the state; the accountability of the offender is then put in terms of punishment. Offences themselves are viewed as being strictly legal and lack moral, social, political and economic considerations. Thus, offenders play a largely passive role in their proceedings depending instead on

professionals whose legal expertise can be bought to represent their interests.

This model of justice does not focus on remorse, repentance and forgiveness yet these traits are all built into the guilty plea process as a formality (offenders are often counseled to plead guilty as a strategic manuever in an attempt to decrease severity of punishment). Thus rather than focusing on the disruption of community dynamics, the focus is directed toward the individual him/herself.

The key differentiating factors then are not the remorse and repentance themselves; Aboriginals too recognized that these key factors reflect the offender's ability to restore his/her inner harmony and that of the community. However, in the Aboriginal view, the offence itself is not paramount, the individual and the individual's conduct in relation to the community is. Negative behaviour is seen as an error of judgment affecting not the offender alone but the entire community. For the Aboriginal then, the goal is not to punish the crime but rather repair the rifts caused by the crime within the community and to assist the perpetrator in his efforts to find his path in life again, placing the offender at the centre in the restorative process.

These two ethnoculturally distinct approaches toward justice have led to a myriad of misunderstanding and conflict between Aboriginals and the Non-Aboriginals in control of the criminal justice system. Rupert Ross, in "Leaving Our White Eyes Behind: The Sentencing of Native Accused", relates an experience that puts these differences into perspective.

> While the miscreant and his victim were summoned before an Elders Panel, there was never any discussion of what had

> happened and why, of how each party felt about the other or of what might be done by way of compensation. Nor was there any imposition of punishment. Each party was instead provided with a counseling Elder who worked privately to "cleanse his spirit." When both counseling Elders so signified by touching the peace pipe, it would be lit and passed to all. It was a signal that both had been "restored to themselves and to the community." If they privately arranged recompense of some sort, that was their affair. As far as the community was concerned, the matter was over.[31]

In the Euro-Canadian justice system, the offender would have been charged, presented in court and if found guilty of the offence, given a sentence as it pertained to the crime committed. Thus, interpretations of what is just in the confines of the legal community culture have little correlation to what is just in the community culture in which the offence has been committed. The psychological effect of these differences results in a general feeling that the criminal justice system is not present for the support and protection of the community, rather it is felt that legal enforcers who are not aware of the circumstances and the environment are interfering with the community dynamics unnecessarily, often leading to feelings of resentment.[32]

The Aboriginal notions of "Respect"[33] and "Non-interference" are two other examples of how conflicting values can interfere with the criminal justice system. The Aboriginal notion of respect is unqualified. To show disrespect indicates an imbalance within the individual which needs to be corrected. Respect, however, also negates the possibility of giving advice

---

[31]Ross, Rupert, "Leaving Our White Eyes Behind: The Sentencing of Native Accused," Canadian Native Law Reporter, 3(1989), p. 6.

[32]Information related to the researcher based on interviews in Northern Ontario and Northern Manitoba.

[33]referring to respect for all things, for all people, for the Creator and for oneself.

in a direct manner, for to do so would be to show disrespect for the individual and be contrary to the principle of non-interference.[34]

According to Rupert Ross, this is one of the dominant forces in the cultural clash between Aboriginals and the Canadian justice system. Ross quotes a passage directly from Dr. Brant, a Mohawk and a practicing psychiatrist, who attempts to explain this principle:

> The Ethic of Non-Interference is probably one of the oldest and one of the most pervasive of all the ethics by which we Native people live...but it is not very well articulated. The person who explained it best was a white woman, an anthropologist, named Rosalie Wax, when she published a paper in 1952 called "Indians and White People". This principle essentially means that an Indian will never interfere in any way with the rights, privileges and activities of another person.[35]

In the past, this phenomenon was observed by the "unusual" reaction of Aboriginal peoples to the court system. The Aboriginal doctrine of non-interference places an indirect slant on Aboriginal behaviour within the criminal justice system. For the Aboriginal, advice or direction is never given directly for to do so would be considered a violation of the individual's right to self-determination and further damage his/her self-respect. This ethic is easily observed in the interaction between Aboriginal children and their parents. Children are to be left free to make their own choices and to learn from their own mistakes. This to the non-Aboriginal is often interpreted as the absence of parental direction and control and hence, a lack of concern.[36]

---

[34]Ross, Rupert, Dancing With a Ghost: Exploring Indian Reality. (Markham: Octopus Publishing, 1992), p.12.
[35]Ibid., p. 12.
[36]Ross, Rupert, "Leaving our White Eyes Behind",note 31 above. p.8.

Rupert Ross recounts an experience he encountered in Northern Ontario involving a youth who had done a great deal of damage to the teachers' lounge at the community school. The youth was charged and brought to court where the boy's father was asked by the judge what he did when he learned that his son had committed this violation. The Father responded that he had hidden the boy's shoes at night. Although this appears quite lenient in our terms, to the father, it was probably further than he should have gone in interfering with his son's life.[37] The normative procedure for correction is to recount past experiences or stories which indirectly convey a "moral". In this way the offender is not blamed for his/her actions, rather, he/she is given the tools (examples, reiterated through stories, of how others may have dealt with similar problems in the past) to heal themselves so that these actions will not continue. The offender and the victims are expected to contemplate these stories and consequently receive guidance in their quest for inner harmony and peace within the community.

Although many Aboriginal people no longer live in a traditional life style, their residual cultural values create misunderstandings and often lead to conflicts because the Euro-centric view of justice and system of laws is philosophically incompatible with Aboriginal values. The ethics of respect and non-interference are just two of the many philosophical differences between Aboriginal and Non-Aboriginal cultures. Some of these inherent philosophical differences between Aboriginal peoples and our Euro-Canadian justice system were summarized and presented by James Dumont in a paper presented to the Royal Commission on Aboriginal

---

[37] Ibid. p. 8.

Peoples.[38] Essentially, Aboriginal cultures view crime as a disruption of community harmony, which necessitates that harmony be restored between both the offender and the community. This contrasts drastically with the Euro-Canadian assumption that crimes are transgressions of commonly held norms, and require punishment and/or treatment to prevent future anti-social behavior. A more detailed outline of the major points of disagreement between the two views of justice is contained in Figure 1.

---

38 Dumont, James, "Justice and Aboriginal People" in Aboriginal Peoples and the Justice System(Ottawa: Minister of Supply and Services Canada, 1993), p.66.

Figure 1.
Zones of Conflict in the Justice Arena

ABORIGINAL RESPONSE TO THE LAW	EXPECTATION OF LEGAL SYSTEM
*regular teaching of community values by elders and other who are respected in the community;	*everyone under obligation to obey set laws as determined by superior state authorities;
*warning and counseling of particular offenders by leaders or by councils representing the community as whole;	*society reserves the right to protect itself from individuals who threaten to harm its members or its property;
*mediation and negotiation by elders, community members, and clan leaders, aimed at resolving disputes and reconciling offenders with the victims of the misconduct;	*retributive punishment: justice requires that a man should suffer because of and in proportion to, his moral wrong-doing. Punishment is set by legislation; judgement is imposed;
*payment of compensation by offenders (or their clan) to the victims or victims' kin, even in cases as serious as murder;	*the perpetrator is the object of sentencing; retributive incarceration and rehabilitation are means to deter and punish offenders;
*in court, a front that appears silent, uncommunicative, unresponsive and withdrawn--based on the desire to maintain personal dignity. This is often interpreted as insolence and an uncooperative attitude;	*expected behavior in court: defendant must give appearance of being willing to confront his/her situation and voice admittance to error and show remorse and willingness to change; must express desired motivation for change;
*reluctance to testify for or against others or him/herself, based on a general avoidance of confrontation and imposition of opinion or testimony;	*obligated to testify and defend oneself in order to get at the facts based on an adversarial mode of dealing with legal challenges;
*often pleads guilty on the basis of honesty or non-confrontational acquiescence.	*expected to plead not guilty on basis that one is innocent until proven guilty.

Source: James Dumont, "Justice and Aboriginal People" in Aboriginal Peoples and the Justice System. (Ottawa: Minister of Supply and Services Canada, 1993) p.66.

Because these two justice ideologies and modes of social control differ to such a large degree, it has been argued that the "white" philosophy of "policing" is at least partially responsible for the mistrust and prejudice which characterizes interactions between the two cultures. Aboriginal people inevitably view Euro-Canadian policing as the imposition of authority from above and thus naturally mistrust it. In the Aboriginal Justice Inquiry Report, Hamilton and Sinclair argued that the major objective of their recommendations based on policing were "...to foster the establishment of effective Aboriginal police forces, staffed with officers who will be sensitive to Aboriginal people, and to improve the manner in which non-aboriginal forces serve Aboriginal people." They further argued that it was essential to adopt a community policing approach which would provide services that are culturally appropriate and committed to justice for Aboriginal people within their own cultural framework.[39] The AJI's approach to courts is similar, arguing that federally and provincially run courts that service Aboriginal communities should be abolished in favor of a new court system reflecting the beliefs and values of Aboriginals and replacing the existing court jurisdictions.[40] It is expected that by making the justice system more culturally sensitive to the differences Aboriginals experience, the inequality experienced would diminish.

STRUCTURAL BARRIERS TO ALLEVIATING CULTURE CONFLICT

It has been established that concepts of justice and how justice is to be administered vary. When this is viewed in terms of the differing beliefs and values of the professionals within the legal system and the

---

[39] Depew, Robert "Policing Native Communities: Some Principles and Issues in Organizational Theory", Canadian Journal of Criminology, July/October, 1992), p. 252.

[40] Aboriginal Justice Inquiry Report, Vol I., pp.735-736.

community it serves, problems are apt to arise. However, when the local cultures are further isolated by ethnic differences, it is often impossible for the legal culture to understand fully the beliefs and values of the citizens it serves. On the other hand, it is generally accepted that to satisfy the needs of each ethnic group in Canada is an impossibility. It is expected therefore that all Canadians accept the justice ideology of the majority which has been termed the Euro-Canadian[41] concept of justice.

In Canada, the Canadian Constitution provides the framework within which laws are developed and applied. With respect to the application of law, the Charter of Rights and Freedoms (included within the Constitution) guarantees the equal treatment of all Canadians under the law and states,

> every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and in particular, without discrimination based on race, national or ethnic origin, color, religion, sex, age or mental or physical disability.[42]

Thus, given the same set of circumstances all Canadians regardless of race or national origin are expected to be treated in the same manner. The law is expected to guarantee equality in a state of inequality and diversity. The laws that exist however are often too rigid and often do not reflect the inequality of condition that influences the impact of legal equality as a whole.

Criminal law and procedure follow in the same vein placing demands on everyone in a formally equal manner. The Criminal Code of Canada for example was developed with the notion of a uniform law for all of Canada to ensure the equality of law enforcement. However, the very notion of

---

[41] referring to non-Aboriginals.

[42] Canadian Charter of Rights and Freedoms, s.15 (1).

"equitable treatment" raises questions of ultimate fairness or justice when the reality of a diverse population is considered.

Traditionally, the perspective of criminal law has been that formal equality is sufficient; as long as everyone is treated identically, then everyone is treated equally. The assurance of formal legal equality however is based within the context of the justice ideology of the majority (the Euro-Canadian majority). A problem therefore arises when cultural differences, differences in historical experience,[43] and social and economic forces are not compatible with the ideology of the majority. When this occurs, equality can become compromised. In other words, the impact of identical treatment of people in the criminal justice process may well mean unequal treatment if the law fails to recognize initial differences between people. Chief Judge Heino Lillies of the Yukon Territorial Court recognized this point in Justice on Trial, a report of the Task Force on the Criminal Justice System and its impact on Indian and Metis People of Alberta:

> The concept of equality in court proceedings is based on the premise that any law is equally applicable to, understood by and concurred in by all those subject to it. It is, in fact, an assumption of cultural homogeneity; it operates to maintain the existing sociological order. In non-legal terms, this assumption is patently false. It is obviously false in the many small, often isolated communities in the territories and northern parts of the provinces where native peoples have a significant, and often predominant presence. The 'equal' treatment by the justice system of those native people who

---

[43]Most if not all immigrants to Canada have experienced a historical progression from feudalism through to industrialization, thus, all have an understanding of personal authority, hierarchical relationships and the concept of a ruling entity (be it monarch or government). This background in combination with the rise of bureaucratization and rationalization experienced by immigrants stands in sharp contrast to the historical development of Aboriginal peoples.

> are culturally and otherwise distinctive is, at best, problematic and, at worst, discriminatory.[44]

Issues of discrimination are in part reflected in access to legal equality. "Access" refers to the ability or means or power to obtain justice within the system. When economic constraints, geographical isolation or cultural differences impede access, discrimination is evident. Former Chief Justice Brian Dickson was of the opinion that access to justice included articulating a distinctly Canadian legal doctrine but that it also meant "bringing the doctrine and the law in general, within reach of those whom it is intended to benefit."[45] He argued that people have a right to justice and that it was the job of "lawyers and judges to see that they get it".[46] At the same time however, offenders are to be treated "equally" which means that they should be treated more or less identically.

Thus we reach a rhetorical dilemma. The law is based on the premise of identical treatment. However, as Lillies points out, in many Aboriginal communities, the Aboriginal peoples are culturally and otherwise distinctive--in other words, not equal. How then can the law address both equality and distinctiveness simultaneously?

It is argued that equitable treatment within the legal system implies that its societal base or legal culture shows evidence of caring, respect and a desire for the equal treatment of those it serves. Thus, the

---

[44]Cawsey, Mr. Justice R.A. (Chair)Justice on Trial: An Aboriginal Perspective on Justice, Report of the Task Force on the Criminal Justice System and its impact on Indian and Metis People of Alberta, Vol.1 (Edmonton: Attorney General and Solicitor General of Alberta), p. 9.
[45]Kaiser, H. A.," The Criminal Code of Canada: A review based on the Minister's Reference", UBC Law Review (Special Edition, 1992), p. 49.
[46]Ibid., p. 49.

legal system is not expected to be viewed as rigid, rather it is assumed to have the flexibility it needs to accommodate differences among the citizens it serves. In addition, to satisfy the need for consistency and sensitivity within the criminal justice system it is necessary that legal equality be construed liberally and be adhered to in a holistic[47] manner by all of society regardless of ethnic origin otherwise inequality of treatment could result.

It is therefore recognized that although formal legal equality is necessary as a standard (it legitimizes the perception of equal treatment, thus promoting adherence to laws); the rigidity necessary in a standard law disregards differences between people and thus effectively reflects the dominant beliefs and values of society.

The rigidity of law however is tempered by the discretion of those enforcing it. This however can invariably lead to a new set of problems. Although the law itself may be rigid, legal decisions require some value judgments by those delivering them. When members of the majority (Euro-Canadians) make these judgments based on their own "world view", they often perceive that decision ethnocentrically. A neutral stance on the part of legal administrators can unintentionally become a biased stance if they are using their own beliefs and values or the beliefs and values of the legal culture in which they operate, to make those judgments. This can lead to a situation where judges, court officials, and police are unable to see the inequality that exists.

Furthermore, to assure equality, the criminal justice system must provide the same minimum level of service to all people. In practice

---

[47]Holistic manner implies that all legal institutions within the criminal justice system and all citizens must perceive that the system is applied and treatment rendered equally to all members regardless of race, sex, age, or physical disability.

however, particularly in the northern communities of Canada, the system fails to achieve this goal. As mentioned earlier, the environment within which the system operates has a direct influence on the services provided. The level of service many Aboriginal communities receive in terms of interaction with police, access to legal aid and assistance with the court process is not equal to that of the Euro-Canadian majority. Again, this is primarily a result of the geographic location of many of these communities and the expense of providing services to these areas.[48]

Finally, an individual cannot be said to have been treated equitably if he/she was driven into criminality by poverty and hopelessness and then was neglected or abused by the police and/or the court system. Even if the individual is finally accorded justice in the end, inequality in the initial stages of the criminal proceedings renders equity as a whole inoperative. Thus, although the system of justice and the judicial framework play a dominant role in the delivery of justice, factors such as geographical isolation, culture conflict, poverty and the use of discretion are key issues.

To summarize, justice in Canadian society is the basis of law, from the creation of offences to the ultimate release of offenders. It tends to percolate upward from its social and economic base to the higher echelons of the criminal justice system. Generally, law is thought to play a central role in the smooth functioning of our social system. Laws are believed to enshrine the most deeply held moral values of all people and the legal system is believed to provide fair and equal treatment for all members of

---

[48]Although per capita personnel rate may be higher in smaller communities, providing access to these services incurs expenses that are not comparable to those in more urban areas. Services then are compromised often resulting in disillutionment with the criminal justice system.

society regardless of class, sex, age, race or religion. However, when differences in legal ideologies arise based on historical or cultural differences, this notion of equality can be compromised.

As mentioned earlier, legal equality is guarded by strict procedural rules which govern the legal relations between people and the state. These rules are known as "due process" of law and are the basis of many of the rights and freedoms that exist in the legal and political systems in which we live. The maintenance of equilibrium and balance within these systems ultimately underpins the behavior of law and provides for the equality of treatment under the law. When this balance is tipped because of cultural, economic or geographical reasons, equality of justice is undermined. Yet, if justice is not standard and is instead defined by the community, inequalities may again develop if no standards are established.

Under the present system this situation is avoided by the perceived impartiality of the law and its agents (including enforcers and adjudicators). Adjudicators are believed to stand apart from society forming what is viewed as a neutral body that can arbitrate, in an impartial manner, the social struggles and conflicts that take place in society. Judges in our society are seen to epitomize the even handed, non biased neutral stance reflected in this perspective. However, agents of justice are victims of the social norms in which they operate. It is because of this human element that tragedies such as the incarceration of Donald Marshall were possible. Thus again we reach a dichotomy. Not only must the legal system be sensitive to the needs of the population it serves, the system must also be insulated from external influences that may bias legal decisions. Regardless of the good intentions legal officials

may have, personal bias plays a role in any decision made. When internal forces such as bias that develop within the context of a police detachment become routine and accepted as the norm by the individual, impartiality may become compromised.

The Donald Marshall Inquiry was one of the first to put the administration of justice under scrutiny in terms of the conflict between legal independence and the influence of the local legal culture. In this case the human side of the justice system was visible and questions about equality, impartiality and fairness of the system emerged. Inequitable treatment within the Canadian justice system and the inquiry into this case have become pivotal to research commenced in regard to native equality under the law. In this case, Donald Marshall Jr. was not only denied justice within the processes leading to conviction but also in the aftermath. Following a thorough examination of the many facets of the Marshall case, the commissioners investigating the case concluded that racism helped to bring about Marshall's wrongful conviction.

> We recognize that the root cause of much of the discrimination Blacks and Natives complain about can be traced to social, political and economic structures, institutions and values that are not specifically part of the criminal justice system [49].

The commission further noted that

> Indians suffer adverse effects from the predominantly white criminal justice system, we need to find ways to change the system. Native Canadians have a right to a justice system they respect and which has respect for them, and which dispenses

---

[49] Clark, Scott, The Mi'kmaq and Criminal Justice in Nova Scotia, Royal Commission on the Donald Marshall, Jr., Prosecution, (Province of Nova Scotia,1989), p. 150.

> justice in a manner consistent with and is more sensitive to their history, culture and language.[50]

It must be recognized that although legal equality is a goal for Canada, it is not an issue that is clear cut. The formal interpretation of the law and the social system in which it operates can invariably lead to inequality. Thus, a recognition of the community beliefs and values in which the judicial system operates must be understood. This understanding however can be difficult to achieve in light of the substantially different norms and values that have developed over time between the Euro-Canadian majority and the Aboriginal minority. One must also be vividly aware that Aboriginal communities are not homogeneous. Each community has its own set of beliefs and values. Some cultural traits may overlap communities, yet, to assume that all Aboriginal communities are even similar is to be gravely mistaken.

---

[50]Ibid., pp. 162-163.

Chapter 3: Socio-Economic Factors

Chapter 3: Socio-Economic Factors

Socio-economic factors place Aboriginal criminality in perspective with regard to the economic and geographic environment. Although not all Aboriginal communities are isolated and not all Aboriginal peoples occupy the lowest socio-economic level in Canadian society, a substantial number do. These two factors contribute to Aboriginal criminality on two levels. The first is structural, the effect of which is to restrict access to legal services; the second, a social factor, restricts access to social and support services, increasing the likelihood of criminal activity and social disintegration. The physical isolation of many reserve communities require that any services provided must be imported. In addition, geographic isolation influences cultural dynamics and the degree of economic dependence a given community experiences.

GEOGRAPHIC ISOLATION

The remote and isolated position of many Aboriginal communities has meant that specific policies have been implemented based on opposing goals. On the one hand, improved communications between remote areas and service centres is encouraged. Policies implementing such programs as community-based policing, Aboriginal court workers and police and court liaisons have been established; yet to date, the degree of success (or failure) of these policy initiatives has gone relatively unmonitored. On the other hand, there has been a push to allow Aboriginal peoples autonomy over their criminal justice matters. This has resulted in a withdrawal of some services (federal and provincial police services for example) to Aboriginal communities. Regardless of the approach however, criminal

justice statistics suggest that neither approach has been highly successful.

Very little contemporary research has focused on the variable of geographic isolation in terms of the provision and quality of services provided to remote communities. Considering Canada presently has approximately 2,241 documented reserves[51] and spends approximately $3 billion in the Native sector, approximately 20 million of this on the administration of justice,[52] it is surprising that the services these funds provide have not been closely evaluated. Aboriginal peoples recognize the difficulties in providing services to remote communities; however, as Canadian citizens, they justly believe that they are entitled to the same services offered other Canadians.[53] In addition, the option of moving to a location where service may be more readily available is not an acceptable option for many.

For most Aboriginal peoples the reserves in which they were born and raised always constitute "home". It was recognized by both James Frideres and the Aboriginal Justice Inquiry that the reserve still plays a vital role in the life of most Aboriginals, even those that may have migrated into mainstream Canadian society in search of employment.

---

[51]One must be aware however that absolute numbers are difficult to obtain in that the true number of reserves varies over time according to the policies of the federal government.

[52]Frideres, James S., Native Peoples in Canada: Contemporary Conflicts, (Scarborough: Prentice-Hall, 1993), pp.480,149. Monies spent on the administration of justice vary depending on the source. For example, James Frideres used the Nielsen Report as his source of expenditures combining monies obtained from the Department of Indian Affairs, The Department of Justice and the Solicitor General's Office. Figures obtained from the Minister of Supply and Services Canada, 1991-1992 Estimates indicate spending in the area of administration of justice to be only 13 million.

[53]When asked for suggestions to ameliorate problems with the delivery of services to remote Aboriginal communities. One Aboriginal person indicated that they realized that "it would cost more here than in Winnipeg, but if they [the Canadian Criminal Justice System] can't do it, let us do it [run their own justice system]". Interview with Aboriginal, Northern Manitoba, 15 August, 1993.

> ...the reserve still provides security and roots for most Indian people. The reserve is where the majority of Indians have grown up among family and friends. Even for those who leave, it continues to provide a haven from the pressures of White society.[54]

The reserve however is somewhat of a dichotomy in that as a "home" it provides the security and comfort of familiarity, yet since most reserves are located in either rural or remote areas, they lack the services and the comforts associated with more urban communities. For example, in 1984, almost half (47%) of Indian housing failed to meet basic standards of physical condition, over one-third (36%) were seriously overcrowded and (38%) lacked some or all of the basic amenities such as running water, indoor toilet, or bath or shower.[55] This situation has not improved substantially over the past ten years. Throughout interviews in Manitoba Aboriginal communities, it was made clear to the researcher that the majority of homes in remote northern communities do not have running water or sewage systems. Many still rely on "honey-pots" in the winter months that serve as toilets, and most if not all, due to the high costs of hydro services, must heat water via wood stove for baths. The situation is similar in Ontario; 24 (92%) of questionnaire respondents indicated that in their community, some homes did not have running water, hydro or telephone service. Lack of these services is dependent first on the physical availability of these services; and second, on the ability to pay for the services if they are available.

Because reserves are situated in a variety of geographical contexts the socio-economic status of reserves varies dramatically due to the

---

[54]Frideres, James S., Native Peoples in Canada: Contemporary Conflicts, p. 152.

[55]Silverman, Robert A., and Nielsen, Marianne O., Aboriginal Peoples and Canadian Criminal Justice, (Toronto: Butterworths, 1992) p.25.

barriers that may exist with regard to development potential, population mobility and transportation needs.[56] Developmental potential aside, the combination of transportation and population mobility plays a key role in the administration of justice to northern remote communities.

First, because of the issues raised earlier with regard to living conditions in many reserve communities, many legal professionals are not willing to make the reservations their permanent place of residence. Thus, if professional services are needed in the community, arrangements have to be made for lawyers, police investigators, or social workers to fly into the community. Often this is at the convenience of the professional or limited by available flights rather than at the convenience of the Aboriginal peoples. The alternative is for those requiring a service to fly to the nearest service centre, often more than 350 kilometres or more distant. Considering the financial cost of mobility, this is often not a viable option.

The Department of Indian Affairsand Northern Development (DIAND) categorizes reservations in terms of four types.[57]

DIAND CATEGORIES

Urban	within 50 Km of the nearest service centre.
Rural	between 50-350 Km from a service centre.
Remote	beyond 350 Km but still accessible year round by road.
Special Access	no year-round road connects the reserve to services.

[56]Several communities visited are located on rock and muskeg. This essentially eliminates the possibility of farming. In addition, the cost of importing goods to be manufactured into exports that must be flown out to an urban market is not cost effective.

[57]Ibid., p. 153.

Since special access zones and remote zones are essentially the same (both require substantial demands on mobility for both citizens and service providers) the categories are often collapsed into a remote zones.

FIGURE 2

Aboriginal Populations by Geographical Zone, 1990

GEOGRAPHICAL ZONE	1971	1976	1981	1986	1989
URBAN					
Number	67414	76485	86816	98474	103572
Percent	36%	37%	38%	37%	37%
RURAL					
Number	77314	83392	86574	102289	108511
Percent	41%	40%	38%	39%	39%
REMOTE					
REMOTE TOTAL	43785	49787	54102	63424	67590
Percent	23%	24%	24%	24%	24%
TOTAL					
Number	188513	209637	227492	264187	279663
Percent	100%	100%	100%	100%	100%
(special access)	11108	10974	13167	14224	15494
	5.90%	5.20%	5.80%	5.40%	5.50%
(remote)	32677	38813	40935	49200	52096
	17.30%	18.50%	18.00%	18.60%	18.60%

Source: Indian and Northern Affairs Canada, Basic Departmental Data, 1990, 15: 1971-1989.

The above chart (Figure 2) indicates that although a large percentage of Aboriginal peoples are recorded as living in Urban areas, approximately 24% of the overall Aboriginal reserve population continue to live in remote or, special access areas. Thus, the expenses attached to access to service centres increase accordingly for these citizens.

Regionally, as shown in Figure 3, it is evident that many Aboriginals in both Ontario and Manitoba live in areas considered to be remote, in other words areas not accessible by road or areas that are 350 kilometres from the nearest service centre. Almost one half of the Aboriginal peoples in Manitoba and close to one third of Aboriginals in Ontario have no ready access to a service centre.[58]

FIGURE 3.

NUMBER OF BANDS BY GEOGRAPHIC LOCATION, 1991

Region	*REMOTE*		*RURAL*		*URBAN*	
	Number	Percent	Number	Percent	Number	Percent
Atlantic	n/a	n/a	13	45	16	55
Quebec	14	36	5	13	20	51
Ontario	34	30	52	45	29	25
Manitoba	25	44	26	46	6	10
Saskatchewan	10	15	43	63	15	22
Alberta	7	17	19	46	16	38
B.C.	53	27	77	40	64	33
N.W.T.	8	n/a	7	n/a	1	6
Yukon	13	n/a	n/a	n/a	n/a	n/a
Canada	164	29	242	42	167	29

Source: Frideres, James, Native Peoples in Canada. p. 150.

Both rural and remote locations imply the need for substantial transportation costs in order to access the nearest service centre. It is therefore possible to conclude that the expense attached to access of Justice services is greater for Aboriginal communities.

In addition Figure 4 indicates that although band populations vary in size, Manitoba appears to have a relatively equal distribution of bands in

---

[58]Ibid., p. 153.

each category, the exception being in bands consisting of 100-500 persons and bands of over 12,000 persons. Ontario on the other hand has a greater concentration of small band populations, yet at the same time, three very large reserves consisting of 12,000 or more persons. This information when combined with the regional distributions of Figure 3, wherein 90% of Manitoba's reserves are either in Remote or Rural areas (44% in remote), and where Ontario figures indicate that 75% of Aboriginal bands live in either Remote or Rural (only 30% in remote alone), makes it possible to conclude that a greater number of Aboriginal peoples in Manitoba live in remote communities compared to Ontario.

Figure 4.

Distribution of Band Populations by Size and Region,1986

Region/Size	100	100-499	500-999	1000-1999	12000	To
Atlantic	8	16	3	2	n/a	2
Quebec	12	14	5	7	1	3
Ontario	35	52	20	5	3	1
Manitoba	10	25	12	11	1	5
Saskatchewan	5	44	16	2	1	6
Alberta	9	13	11	3	5	4
B.C.	96	83	14	2	n/a	1
N.W.T.	17	n/a	n/a	n/a	n/a	1
Yukon	14	n/a	n/a	n/a	n/a	1
Canada	206	247	81	32	11	5

Source: Frideres, James, Native Peoples in Canada. p.150

The remote location of most Aboriginal communities provides unique difficulties in the delivery of services and the administration of justice in these areas. Because many of the areas are not accessible by road, most of the supplies and services brought to these communities must be transported via plane or boat. The cost to the community and the

government in the delivery of these services both in economic terms and in terms of convenience is severe. On a social level, remote locations often lead to communication difficulties and hence social isolation. This is particularly evident in a comparison of group interactions between Ontario Aboriginals and Manitoba Aboriginals. Personal research indicated a great deal of inter-tribal associations in Ontario, predominantly due to the political alliances of the Six Nations Confederacy. Because many of the larger Aboriginal communities in Ontario are accessible by road communication and awareness of other communities is possible. Many Aboriginal Communities in Ontario have amicable associations with other communities and most are networked via Six Nations councillors.

Manitoba on the other hand tends to lack the cohesion of Aboriginals in Ontario. This is often indicated by the rivalry that exists between communities and the tensions that arise when differing communities interact.

Isolation also places unique demands on the administration of justice in these communities. Because remote and rural communities must be accessed by air[59], cancellation of court services or delays in police response due to weather conditions or mechanical failures is a common occurrence. If a plane is out of service, arrangements must be made for another; other transportation options are not available.

In addition, defence counsel and legal professionals do not live within these communities. Thus, if a citizen has a legal concern they have two options: either rely on the telephone service or incur the expense of traveling into the service centre to address the issue on a personal level.

---

[59]Many rural communities must be accessed by air due to time constraints put on court services. It would not be possible for a judge to travel to more than one community per day without the use of air transportation.

Considering the economic situation[60] in which most Aboriginal peoples find themselves this is often not a viable option.

Geographic isolation and economic disparity work hand in hand. Not only do many Aboriginal peoples not have ready access to the services provided to other Canadians due to the distances they must travel to obtain these services, but they are also further limited by the economic concerns associated with obtaining access to services the rest of Canada enjoys.

ECONOMIC DISPARITY

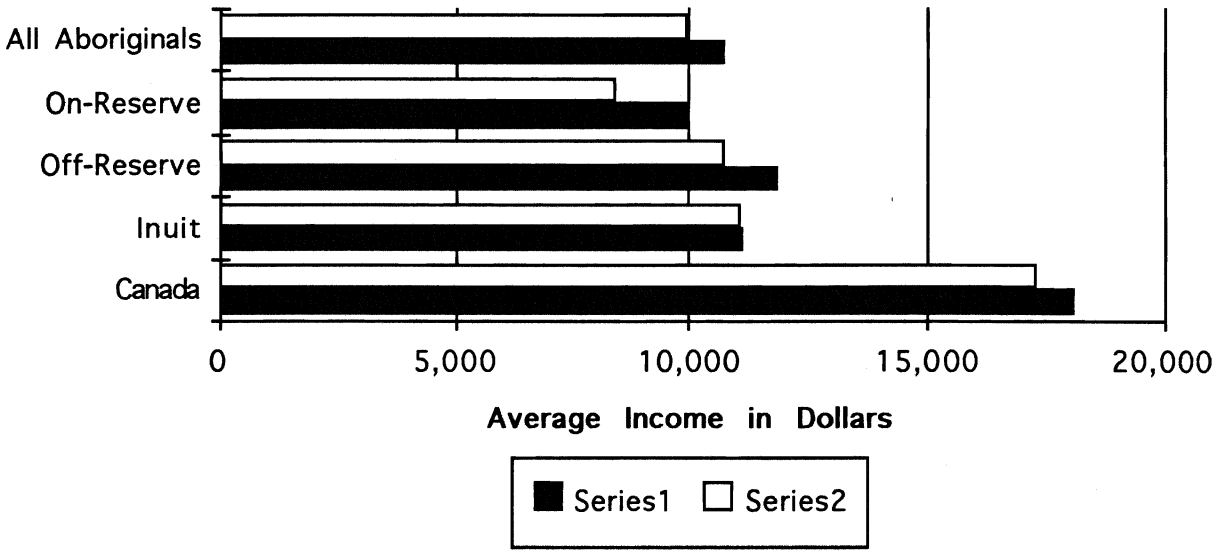
It has become common knowledge that Aboriginals in Canada constitute the "poorest of the poor" in relation to other Canadians regardless of their ethnic origin and regardless of policies formulated to alleviate Aboriginal poverty. In 1966, the per capita income per year for Aboriginal peoples was about $300 in comparison to $1400 for Non-Aboriginal Canadians. A comparison of average individual incomes for the years 1980 and 1985 (see Figure 5), shows that there has not been a great deal of increase. In addition, a comparison with the average individual income of all Canadians show Aboriginals earn approximately $8,000 less than the average Canadian.

---

[60]See following section, "Economic Disparity".

Figure 5.

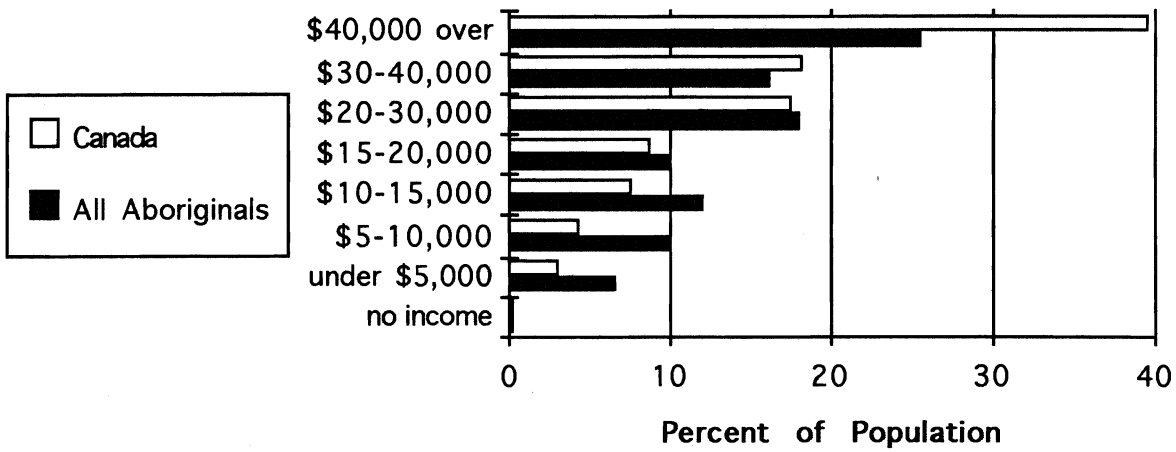
Average Individual Income, Aboriginals and All Canadians, 1980, 1985



The disparity between the Aboriginal and non-Aboriginal economic situation increases when Average family incomes are considered. While the proportion of families with incomes of $20,000 to $40,000 is similar for all groups, four times as many Natives have incomes under $20,000 as over $40,000 (see Figure 6.). When these data are compared with all Canadians, we find twice as many Canadian families had incomes over $40,000 than under $20,000.

Figure 6.

Average Family Income, Aboriginals and All Canadians, 1985



Source: **Highlights of Aboriginal Conditions 1981-2001, Part III, Indian and Northern Affairs, 1989, p.40.**

In Manitoba however, Aboriginals appear to be poorer even than Ontario Aboriginals. A comparison of income levels between Aboriginal peoples in Ontario and those in Manitoba indicate that only 18% of Aboriginals in Manitoba have incomes exceeding 20,000 in comparison to 30% for Ontario Aboriginal peoples (see Figure 7.). Statistics indicate that 60% of Ontario Aboriginals have average employment incomes of less than $20,000 whereas 72% of Manitoba Aboriginals have incomes of less than $20,000. Thus, it is possible to conclude that not only are Manitoba Aboriginal communities more likely to be isolated in remote geographical areas, but they are also more likely to be living in poverty.

Figure 7.

Employment Income of Aboriginal Peoples by Province

Total Income from all Sources, 1990

	Ontario	Manitoba	Canada
no income	8055(11%)	7965(13%)	51445(13%)
under $2,000	8540(11%)	8725(14%)	46605(12%)
2-10,000	17570(24%)	20150(33%)	112590(29%)
10-20,000	17385(23%)	13070(21%)	88465(23%)
20-40,000	17875(24%)	9450(15%)	69225(18%)
40,000 +	4950(6%)	2055(3%)	20480(5%)
Total # Adults (15+)	74,410	61,415	388,900

Employment Income, 1990

	Ontario	Manitoba	Canada
under $2,000	7105(15%)	5850(18%)	38750(17%)
2-10,000	12395(25%)	9540(29%)	69975(30%)
10-20,000	9955(20%)	8000(25%)	49060(21%)
20-40,000	14780(30%)	7495(23%)	56595(24%)
40,000 +	4420(9%)	1660(5%)	17490(8%)
Employed Adults	48,655	32,545	231,870

Source: Statistics Canada, Selected Income Characteristics, 1991, Schooling, Work and Related Activities, Income, Expenses and Mobility, Aboriginal Survey. pp.134-135

This conclusion is further supported by the consideration of population density (see Figure 8). Although upon first glance these data indicate that Aboriginal populations in Manitoba and Ontario are comparable, differing by approximately 3,000 persons, the proportion of Non-Aboriginal peoples to non-Aboriginals indicate a large difference, 142:1 for Ontario and 15:1 for Manitoba.

Figure 8.

Population by Province, Aboriginal and All Canadians, 1991

	Ontario	Manitoba	Canada
Aboriginal Population	71,005.00	74,340.00	470,610.00
Total Population	10,084,885.00	1,091,942.00	27,296,859.00
Ratio Non-Aboriginal:Aboriginal	142:1	15:1	58:1
% Aboriginals per population	0.70%	6.80%	1.70%

Source: Statistics Canada Data, 1991, CD-ROM statistics

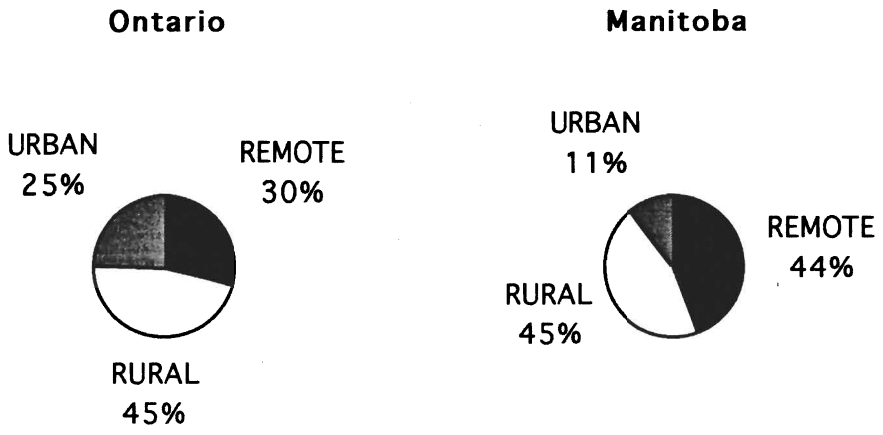
Manitoba therefore has a far greater concentration of Aboriginals than Ontario or Canada generally. This fact in combination with geographical location discussed earlier indicates that Manitoba has a greater concentration of Aboriginals in remote areas (see Figure 9)[61]. Thus, a greater proportion of Aboriginals in Manitoba are not only more economically deprived than Aboriginals in Ontario, but that poverty is accentuated by the a lack of services and support geographical isolation implies.

---

[61]Also see Figure 2, p. .

Figure 9

Bands by Location, 1991



Source: Frideres, James, Native Peoples in Canada, p.150

Figure 9 above indicates that there is a substantially higher Aboriginal concentration in communities defined as Remote in Manitoba than in Ontario. Thus in terms of the provision of services to Manitoba's Aboriginal population, not only are there greater needs placed on service systems in terms of proportional numbers, but the types of services that are necessary are substantially more expensive since they are servicing remote areas.

Therefore, there is no doubt that Aboriginal peoples are both economically and geographically marginalized in relation to the Non-Aboriginal majority in Canada, Manitoba in particular. What this indicates in terms of Aboriginal criminality is that Aboriginals are more likely to become involved in criminal activity than are Non-Aboriginals.

The connection between poverty and subsequent criminal activity has been heavily documented. Two examples are studies conducted by Marvin Wolfgang and Donald West. Marvin Wolfgang et al., upon reviewing a number of American studies concluded in his book, Delinquency in a Birth Cohort, that youths from lower socio-economic backgrounds are more likely to commit more, and more serious crimes than youths from more privileged backgrounds.[62] A British study by Donald West concluded that working-class boys were twice as likely to become delinquents if they came from low-income families and were more likely to maintain a criminal career.[63] The conclusions reached by Marvin Wolfgang and Donald West are supported by the findings of the Manitoba Aboriginal Justice inquiry,

> ...the fact that Aboriginal people occupy the bottom rung on Canada's socio-economic ladder and simultaneously are vastly over-represented in our prisons. Our survey of inmates, for example, reveals that only 30% of Aboriginal respondents were employed full time prior to their most recent arrests.[64]

Justice statistics indicate that not only are Aboriginals overrepresented within the system, but Manitoba Aboriginals in particular are more likely to find themselves in federal and provincial correctional institutions than Ontario Aboriginals or Aboriginals in general.

---

[62]Wolfgang, Marvin et al., Delinquency in a Birth Cohort (Chicago: University of Chicago Press, 1972), pp.245-249.
[63]West, Donald, Delinquency: Its Roots, Careers, and Prospects (Cambridge, Massachusetts: Harvard University Press, 1982), pp.28, 37, 117.
[64]Hamilton A.C. & C.M. Sinclair, Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People, Vol.I, p. 90.

Figure 10.

Percent of Aboriginals Incarcerated, Federal and Provincial,1990

Percent of Natives in Total Admissions to Provincial Jails						
Province	1987	1988	1989	1990	1991	1992
Ontario	**9**	**9**	**10**	**8**	**8**	**8**
Manitoba	**56**	**55**	**44**	**47**	**49**	**50**
Canada:Total	18	22	19	18	19	24
Percent of Natives in Total Admissions to Federal Jails						
Province	1987	1988	1989	1990	1991	1992
Ontario	**4**	**4**	**5**	**5**	**3**	**4**
Manitoba	**39**	**36**	**35**	**40**	**35**	**38**
Canada:Total	10	11	13	11	12	11

Source: ***Canadian Center for Justice Statistics, Preliminary Data Report, Adult Correctional Services Canada, 1990.**
***Canadian Center for Justice Statistics, Adult Correctional Services Canada, 1991-92.**

The above chart (Figure 10) clearly indicates the differing incarceration rates between Ontario and Manitoba Aboriginals. In addition, both the provincial and federal figures indicate that the percentage of Aboriginals incarcerated has not decreased substantially over the past six years despite reports and policies encouraging Aboriginally sensitive programs. The Department of Justice expressed its concern in 1991,

> There is every indication that the Aboriginal inmate problem is worsening, given that the federal Aboriginal inmate population is increasing at more than twice the national rate.[65]

It is not possible to conclude however that poverty is the only reason behind Aboriginal overrepresentation. Some studies have indicated that

---

[65]Department of Justice Canada, Aboriginal People and Justice Administration: A Discussion Paper, (Ottawa: Minister of Supply and Services Canada, 1991).p. 7.

poverty alone is not a corollary factor in the rate of criminality. Elliott Currie for example concluded that simply not having material wealth is only one facet, the most important element is the question of being poor compared to others in the society.[66] The issue of poverty in *comparison* to others has been shown to have a stronger link to the rate of criminality than poverty alone.

> What most predictably generates violent crime is not the simple absence of material goods, but rather the deeper attitudes of hopelessness and alienation produced by inequalities that are perceived as unjust...Violence results "not so much from lack of advantage as from being taken advantage of".[67]

Mary Hyde and Carol LaPrairie in a study conducted on 25 Indian reserves in Quebec found evidence to support this assertion. In their research they found that communities that assimilated the least, that were the most remote and had the lowest incomes, also had the least crime (below the national average), whereas communities that were the closest to urban centres and had the greatest integration and the highest incomes had the highest rates of property crime and the second highest rates of violent crime among the community types.[68] This would tend to support the notion that it is not only cultural difference and economic disparity that leads to conflict between Aboriginals and the Canadian criminal justice system but regional isolation also plays a role. In this

---

[66]Currie, Elliott, Confronting Crime (New York: Pantheon Books, 1985) p.162-164.
[67]Ibid., p. 162.
[68]Hamilton A.C. & C.M. Sinclair, Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People, Vol.I, p. 91.

case, it appears as if isolation from mainstream Canadian society has a positive effect in decreasing the crime rate in remote communities.

These findings however may not reflect an accurate picture of criminality in remote communities. Crime types also vary between urban and remote areas. Property crime for example is often not a major concern in remote communities representing approximately 19% of all crimes. In addition, violent crime (approximately 75% of all crimes) that does occur is generally associated with alcohol or family abuse.[69] Thus, although some categories of crime may be more prevalent in urban and rural areas as opposed to remote, this could be in part due to the fact that the more isolated communities experience different crimes and/or crimes are less likely to be reported in the more remote communities.

For the Aboriginal peoples in Canada then, not only do they not possess nor are they able to possess the material goods available to the rest of Canada, but they also do not receive the same access to services due to geographic isolation. This combination of factors has contributed to Aboriginal marginalization within Canadian society. Yet because of the difficulties in providing adequate services, the Aboriginal condition has not changed to any great extent over the past ten years despite an awareness among Canadians. In observable terms, these conditions are revealed in terms of substance abuse, corruption and violence. This in turn provides a direct link to criminality and incarceration of Aboriginal peoples.

To date research has indicated that the rates of crime on Aboriginal reserves and in Aboriginal communities in the northern regions of the

---

[69] Interviews with police in Northern Manitoba and Northern Manitoba.
figures obtained from: Correctional Service of Canada, Native Population Profile Report, Population on Register 03/31/89, Ottawa: Correctional Services of Canada, 1989.

country are higher than the rates for the general population. In fact, the crime rate among Aboriginals in Canada is nearly two times the national rate in comparison with that of Non-Aboriginals.[70] Add to this the fact that violent crime for Aboriginal bands is three and one-half times the national rate and that alcohol is involved in over 95% of the offences that take place and a clear picture of the social dysfunction of communities is evident. [71]

Alcohol and substance abuse also play a substantial role in the high rates of wife and child abuse. In Ontario, nearly 80% of the Aboriginal women surveyed had been the victims of family violence.[72] In addition, Statistics Canada indicates that, when surveyed, 61% of Aboriginals in Canada indicated that alcohol abuse was a problem facing their communities, 48% indicated that drug abuse was a problem and 39% indicated that family violence was a problem.[73] Associated with these findings is the reality of corruption that exists in many Aboriginal communities, particularly in Northern Manitoba. Most reserves in both Ontario and Manitoba are considered "Dry-Reserves", this implies that no alcohol is sold or allowed on reserves by Band By-law. However, the prevalence of alcohol and drug related offences infer that these substances are available.

Primary research in Northern Manitoba indicated that a strong "Black Market" in drugs and alcohol was present. Vic Satzewich confirmed the existence of this underground economy stating that many of the

---

[70]Griffiths, Curt and Simon N. Verdun-Jones, Canadian Criminal Justice p.638.
[71]Griffiths, Curt and Simon N. Verdun-Jones, Canadian Criminal Justice p. 639.
[72]Ibid., pp.638-639.
[73]Statistics Canada, Language, Tradition, Health, Lifestyle and Social Issues, 1991. "Highlights" p.X.

activities to generate income on reserve communities are legal such as crafts and taxi-rides however, "others such as bootlegging, are illegal".[74] In addition, because of the geographic isolation of these areas in combination with the topography (northern areas tend to have many isolated lakes suitable for landing of float planes) the smuggling of illegal substances into the communities is difficult to detect.

It is therefore evident that geographic isolation and economic disparity play a role in both Aboriginal access to justice services and to the social conditions leading to criminality. Just as cultural differences place barriers to Aboriginal peoples on the social-psychological level, geographic location places barriers on the physical level. If Aboriginal peoples had the economic ability to overcome the geographical barrier, the situation may be alleviated at least to some extent. However, by reviewing the Aboriginal economic situation, it is evident that this is not a possibility.

In terms of the criminal justice system, this translates to an inequality of access for Aboriginal peoples to the judicial institutions that are enjoyed by Canadians in other regions of the country. Judicial services and police services are often "canceled" due to weather conditions and/or mechanical failure of planes or boats. Thus for the Aboriginal, justice in their communities is often sporadic and unpredictable.

For justice administrators, judges, police, and lawyers the remote location of many reserves necessitate almost continual air transportation and the physical stresses this entails in terms of organization (it is

---

[74]Satzewich Vic, and Wotherspoon, Terry, First Nations: Race, Class and Gender Relations. (Toronto: Nelson Canada, 1993) p.73.

necessary for court administrators to carry all files and needed information with them on every circuit trip unlike the urban judge or lawyer that can retreat to his or her office for clarification or reference materials).[75] Because visits to any given community are limited (due to travel and time cost), all parties are pressured to assimilate as much information regarding their clients as possible in the short time they are in the community. Thus, even the service Aboriginals receive is substandard in comparison to the urban court where clients are generally afforded the option of visiting counsel before court or discussing particulars of a case with police in the comfort of their home. The following two chapters discuss some of these impediments in more detail.

---

[75]Another physical stress is the health effects constant take-offs and landings have on an individual. Planes being used are generally small seating 4 to 6 individuals, one plane sat only 2 other than the pilot. Thus, the air pressure changes associated with take-offs and landings incur discomfort. For this researcher, after three days of flights, two locations per day, she experienced sever earaches and headaches. Presumably this is a condition that is subsides over time.

Chapter 4: The Effects of Location, Economic Disparity and Culture Conflict on Policing

Chapter 4: The Effects of Location, Economic Disparity and Culture Conflict on Policing

Policing is perhaps one area in which Aboriginal conflicts have been studied in relatively more detail. It has been recognized that one of the major issues surrounding policing of Aboriginal peoples involves the conflicting philosophical approaches to correction and deterrence held by Non-Aboriginals and Aboriginals. It must be made clear that not all Aboriginal peoples within a community are criminals, nor do they all partake in substance abuse. The majority of individuals in every community are law abiding productive citizens. There are however sufficient numbers who are not and they tend to be disproportionately represented within the criminal justice system.

Cooperation and communal living lie close to the heart of Aboriginal culture. Hence, a sense of loyalty to a member of the community sometimes outweighs concerns about bringing that individual to justice in the Euro-Canadian manner. This however does not infer that the offender or suspect is not assumed to played some part in the allegations; rather, as is often the case, the Aboriginal community will initiate its own investigation of the allegations against the suspect. If the results show that the allegations are substantive, community leaders will contact the authorities and provide any information required with full support given. If however, the allegations are unfounded, the police will be informed of their error and the suspect will remain closeted within the community.[76] Situations such as this give rise to a number of problems in policing of

---

76Interview with RCMP constable, Northern Manitoba, 16 August, 1993.

Aboriginal communities. On the one hand, community solidarity often pressures individuals not to report incidents that take place, fearing reprisals from other community members. Secondly, if the community is not in support of the allegations against the accused, it is not uncommon for police investigations to be hindered by non-compliance on behalf of the community members.

On the other hand, the stability of the community in question plays a role in the detection and apprehension of accused persons within the community. In Manitoba for example it is not uncommon to have rivalries between families. This rivalry is often politically motivated and associated with the economic gains. In cases where a rivalry exists and the accused is a member of a non-power family, it is quite likely that person will be brought to the attention of police. If however the person is supported by the power family, it is possible that fear of reprisals would bias reporting behaviour and cooperation with police. This also poses concern with respect to community based policing. The fear of police officers being influenced by community dynamics is at least one reason why RCMP in Manitoba transfer their officers ever two to four years.[77]

It has been argued by James Frideres, and others that the conflicts that are present between some Aboriginal family groups today are a result of their forced cohabitation in reserve communities. Traditionally Aboriginals were spread out throughout Canada and rarely did family groups have to live in close proximity to one another. Thus, conflict was minimized via lack of association.[78] Smaller homogeneous family groups

---

[77]Information received from both Band Constables and Aboriginal peoples during the course of interviews in Northern Manitoba.

[78]Frideres, James S., Native Peoples in Canada: Contemporary Conflicts, Scarborough: Prentice Hall Canada Inc.(1993)p.25, 153.

were thus able to control and supervise individual behaviour through community pressures.

The traditional Aboriginal mode of behavioural correction was based on small-scale sustained interaction within the community. Each community reflected a wide range of concepts of order and social control that were used individually or together to maintain order within the community. In essence "police powers" were in the hands of the community as a whole.

The Aboriginal means of preserving order in their communities involved participation of Aboriginal members in the resolution of conflicts rather than state intervention. This process involved the participation and consent of the community at large. [79]

This is not to suggest that the community was always cohesive and harmonious. Like any community, it was not immune to social tension and disruption. In the past, members who did transgress the moral and social order would incur the disapproval of one's relatives, friends and neighbors. It was the community's residents themselves that became the "police", thus leading to a system whereby the "police"(community members) operated in a context of reciprocal constraints derived from a variety of social relationships. Every action or inaction reflected the dynamics of the community as a whole.

Among the traditional Cree and Ojibway for example, the remedying of wrongs was a private affair in which the community might choose not to interfere except by ridicule or public condemnation of the offender.

---

79 Mandamin, Leonard et al. "The Criminal Code and Aboriginal People", UBC Law Review, (Special Edition, 1992), p. 6.

Only in the more serious offences would the community as a whole directly intervene.[80]

In contrast, conventional non-native policing is based in an Anglo-European context whereby police view transgressions of law as transgressions against the state. The individual responsible for the action is to be detected and withdrawn from the community. In addition, the format of operation in conventional policing focuses on a hierarchical, paramilitary flow. This style of control tends to direct and constrain personal behavior and the flow of information according to principles of rank, hierarchical authority and conformity to rules. Access to information in this system is available on a "need to know basis" from those at higher levels in the hierarchy. In addition, responsibility and accountability along with decision-making flow down from the top to the wider base of service officers who then follow orders given to them.

Because these two modes of behaviour control differ to such a large degree, it has been argued that the conflict between Aboriginal and non-Aboriginal philosophies of "policing" are responsible at least in part for the mistrust and prejudice the two share when they interact.

Judges A.C. Hamilton and C.M. Sinclair in The Aboriginal Justice Inquiry Report in their observations following the murder of Helen Betty Osborne and the death of J.J. Harper concluded that in both cases, cooperation and understanding between the two cultures might well have prevented the tragedies.

> We believe that the fundamental remedy to this problem is the creation of well-trained and well-equipped Aboriginal

---

80 Coyle, M., "Traditional Indian Justice in Ontario" UBC Law Review, (Special Edition, 1992), p. 605.

> police forces, under Aboriginal direction, providing a full range of police services to Aboriginal communities. We also believe that a community policing approach is vital for the development of effective working relationships between communities and their police forces, and that Aboriginal police services will evolve naturally along the lines of what is becoming known as "community policing," because of the structure and values of Aboriginal communities themselves. Only in this way can the original concept of police, as a support structure for a community's system of laws and customs, be realized for Aboriginal communities.[81]

Community-based policing views the police as agents of social regulation and control by the community rather than encouraging regulation and control by external, independent police forces. It recognizes the necessity to deal directly and indirectly with crime and issues of social disorder in a community context, with an expectation of a reduction in relationships characterized by mutual hostility and distrust which often arise when non-Aboriginal law clashes with Aboriginal culture. It is expected that closer interaction between the two groups, Aboriginals and police will increase understanding and communication.

At present, there are a number of community based policing initiatives in progress in native communities. Several of these programs have been studied in relative detail by researchers. It has thus been discovered that while many in the non-Aboriginal communities see the police as a symbol of public protection, this view is often not shared by all in Aboriginal communities. Not only do some feel the police are

---

[81] Hamilton A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People Vol. II.p. 597.

unavailable for them, but many feel the presence of police is a threat to their community. [82]

Recent research has led to controversy with regard to the effectiveness of the community-based or Amerindian model of policing. One such study conducted by Auger et. al. (1990) revealed that although the majority of Aboriginal citizens studied thought problems should be handled within the community rather than referred to the police or courts, police nevertheless often received "service calls" (non-police related calls for assistance). As well, although only half the community felt comfortable calling the police when trouble arose, they also felt that the community leaders were unsuccessful in getting people to stop causing trouble, thus creating a situation of resignation to a criminal environment.[83]

It is also noteworthy that in reviewing the data of recorded occurrences in three communities, police in the Clear Lake Detachment (a regular OPP detachment) were more likely to use their discretion NOT to lay charges whereas those in Castle Dame and Deep River (Amerindian forces) tended to charge more often, thus calling to question the issue of "sensitive" policing.[84]

Mary Hyde on the other hand paints a different picture. In a study of Amerindian police in Quebec, she found that Amerindian police forces

---

[82]Silverman, Robert and M. Nielsen, Aboriginal Peoples and Canadian Criminal Justice, (Toronto: Butterworths, 1992), p. 104.
[83]Hamilton A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People Vol. I (Province of Manitoba: Canadian Catalogue in Publication Data, 1991), p. 101.
[84]Auger, D. et al, "Crime and Control in Three Nishanwabe-Aski Nation Communities" Canadian Journal of Criminology, 34(1992): p.331-335.

ameliorated at least some of the tensions between Whites and Aboriginals.

> Amerindian police play an important role in service provision; they respond to a variety of service calls, keep law and order and perform the function of crisis intervention.[85]

Hyde does however qualify her position, pointing out that the benefits that accrue through improved police servicing must be weighed carefully against the potential for over policing. She is also concerned about the substitution of police for services that could be provided elsewhere. However, in her study, she does not address the negative perceptions many Aboriginals have of Amerindian police beyond the possibility of overpolicing[86].

It is a common complaint of Aboriginal RCMP constables that they are often seen as an extension of the white arm of the law. The police practice of regularly transferring constables helps enforce this belief:

> The only stable group is the natives, Whites and police are rotated every two or three years... One officer [Native RCMP] moved from God's Lake to Island Lake...he's having lots of trouble with his kids being picked on at school...have to be from the reserve to be accepted...being Native doesn't count.[87]

---

[85]Hyde, Mary "Servicing Indian Reserves: The Amerindian Police" Canadian Journal of Criminology, 34(1992): p.383.

[86]Some of the negative perceptions referred to here are a) Amerindian police are nothing more than "White" officer's in "red skin". RCMP native constables for example are often referred to as "Apples"...red on the outside but white on the inside. b) Because the law that is enforced, is Non-Aboriginal law, the fact that a constable is Aboriginal makes no difference.

[87] Interview with Aboriginal woman of Oxford House Reserve, Manitoba, 25 August 1993.

In recognition of this omission, Hyde refers to Amerindian policing as a "positive" first step, rather than a final shift toward greater autonomy for the native communities involved. [88]

D.J. Loree, in "Policing Native Communities" suggested that the greatest area of difficulty in policing Indian communities arose from the differences in cultural values and outlook on life, problems linked to high unemployment, and dealing with young people. He observed that a significant proportion of the officers he interviewed described themselves as having only a "fair" level of general knowledge about Indians and most of the knowledge acquired was obtained only after they had arrived in the community. These findings led him to conclude that training of non-Aboriginal police in Aboriginal culture and philosophy, as well as educational programs for Aboriginal youth regarding police relations, would assist in diffusing tensions between police and Aboriginals. It was suggested that the amelioration of these tension would in turn decrease overrepresentation of Aboriginals within the system.[89]

Susan Zimmerman argues, that empirical evidence about the extent to which the police are responsible for Aboriginal over-representation in the criminal justice system is at best unreliable. A previous study of arrests and charging patterns in the city of Winnipeg (1974) over a one year period supports her argument. Although the over-representation of Aboriginal peoples was indisputable (Aboriginal people made up 3% of the population yet 27% of male arrests were Aboriginal and 70% of female arrests were Aboriginal) the authors of the study were not prepared to

---

[88]Hyde, Mary "Servicing Indian Reserves" p.383.

[89]Loree, D.J. "Policing Native Communities" in Aboriginal Peoples and Canadian Criminal Justice, p.99, edited by R.A. Silverman and M. Neilsen, 1992.

state that the numbers reflected police action. Instead, it was suggested that the high rate may be a reflection of socio-economic status creating a visible minority which was targeted by police.[90] In other words, it was not Aboriginals per se that were targeted, rather persons living in "slum-like" conditions who happened to be Aboriginal.

It is obvious that good relations between any two differing groups depend first and foremost on good lines of communication and a mutual understanding. It has been suggested that a thorough understanding of each other's values and concerns obtained through appropriate and adequate cultural training (of non-Aboriginal police officers and Aboriginal police officers from other locations) could assist in closing the gap of misunderstanding. However, according to several Aboriginal leaders consulted by the Law Reform Commission of Canada, "the indigenization of mainstream police forces is not a desirable goal, if all it means is that Aboriginal people will be enforcing 'White' law".[91]

It is felt by many that the "White Law" followed by police leads to inequitable and discriminatory treatment from the police. Police are seen as failing to provide adequate protective services, and engaging in "over-surveillance". The exercise of police discretion is often seen as a causal factor in a disproportionate number of arrests and charges.[92] James S. Frideres agrees:

> There is considerable evidence to suggest that Native people are more likely to be charged with an offence than non-Native people in similar situations... When police are able to

---

[90]Zimmerman, S. "The Revolving Door of Despair': Aboriginal Involvement in the Criminal Justice System", UBC Law Review, (Special Edition, 1992)p.375.

[91]Depew, Robert "policing Native Communities: Some Principles and Issues in Organization Theory" Canadian Journal of Criminology, 34(1992), pp. 471-475.

[92]Indian and Metis Review Committee, Report, (1992) p. 166.

> exercise their discretion in charging an individual or not, Native people are more likely to receive a formal charge.[93]

The Law Reform Commission reflected the same view in its report on Aboriginal peoples, stating that although the situation must vary from community to community, several complaints said police are only seen in Aboriginal communities when they come to make an arrest.[94]

Thus we return again to the issue of community-based policing which holds as its goal an integration of community and police. As mentioned earlier, community-based policing tends to be seen as the answer to many of the policing problems associated with aboriginal peoples.

> Aboriginal persons do not enjoy equal access to the law and are not treated equitably and with respect...Even with the reactive enforcement function of the police, a large gap exists between the values and culture of members of the police force and of Aboriginal people. Suspicions arise based on simple misunderstanding owing to culture...Community policing is the most appropriate response by police to the challenges and problems of the next decade.[95]

Robert Depew, in his article "Policing Native Communities: Some Principles and Issues in Organizational Theory", argued that there is a need to develop appropriate Native governing structures at the community level that could support and sustain new policing arrangements. He contends that to achieve this end, the negotiation of community-based Aboriginal self-government, along with new legislative or other

---

[93] Frideres, J.S., Native People in Canada: Contemporary Conflicts, P. 208.

[94] Law Reform Commission of Canada, Report: Ministers Reference: Aboriginal Peoples and Criminal Justice (Report 34, 1991), p. 44.

[95] Ibid., p. 45.

arrangements in the area of justice administration and policing is essential. [96]

It is argued that policing models that localize decision-making, responsibility and accountability for policing at the community level may provide an attractive alternative to external, centralized police agencies. However, as utopian as this theory may sound on paper, this model does have its problems in its application.

One problem rests on the cultural and social development of the community in question. Not all Aboriginal communities have the strength and cohesion to support a legitimate community-based program. Superintendent George Watt of the Thompson, Manitoba RCMP Detachment indicated that reserves in northern Manitoba are generally already policed by the chiefs and band constables. He stated that reserves already have a great deal of autonomy, and the RCMP is only called out for serious offences such as murder or aggravated assault.[97] Yet the crime rates and the rates of incarceration are still disproportionately high when compared to the white population in Northern Manitoba. In addition, the political structure of the reserve itself can lead to a misadministration of justice,

> ...corruption within reserve settings in Manitoba runs rampant often to the point of 'gang wars' between family blood lines... the chief is elected and uses his power for the benefit of his family and supporters. Often this filters through to violence.[98]

Judge Murray Howell expressed this very issue in his criticisms of the Aboriginal Justice Inquiry Report recommendations,

---

[96] Depew, Robert, "Policing Native Communities", p. 252.

[97] Interview with Superintendent George Watt, RCMP, Thompson, Manitoba, 20 August 1993.

[98] Interview with Dr. Charlie Ferguson, Native Health Care and Abuse coordinator, Expert for police regarding sexual/child abuse, having serviced Northern Manitoba reserves for approx. 20 yrs. Winnipeg, Manitoba, 15 August, 1993.

> The politics that exists on reserves...[lead] to family feuds, a 'Hatfield and McCoy' scenario, this could make justice a joke, depending on who's in power.[99]

It became highly evident during the course of my research in Manitoba and Ontario that political instability and warring families was a serious problem in the north. In Manitoba, disputes between estranged factions are often handled by way of violence, one Band Constable in particular indicated "there have been murders because one guy didn't get elected [as chief]"[100]. In situations involving retribution for deeds done against family or allied units the courts are viewed as a minimal deterrent in the face of the more speedy and efficient avenue of taking the law into one's own hands.[101] Corruption on the reserves also leads to only some criminals coming to justice in that only those without support of the leaders are detected. Others are often closeted within the community.[102]

Although the degree of rivalry that exists tends to be varied throughout northern Manitoba communities, families, often on the same reserve struggle over both money and power.[103] The rivalries are well known among both police and Aboriginals alike, according to one Aboriginal,

> ...there's no big power families in Oxford House just the Holy-Rollers and the Rebels, but Rousseau had murders over the

---

[99]Interview with Judge Howell, Provincial Court Judge servicing the Northern Manitoba Circuit, Thompson, Manitoba, 25 August, 1993.

[100]Interview with Aboriginal Band Constable, Northern Manitoba, August 15, 1993.

[101]Interview with Dr. Charles Ferguson, Sunday August 15, 1993. Comment supported by RCMP officers in Northern Manitoba.

[102]Interview with RCMP constable, Northern Manitoba, 16 August, 1993.

[103]Interview with RCMP, Thompson Manitoba. August 16, 1993.

> gambling family versus non-gambling family. Then there's the Brotherhood against the Blood and the Back-Lakers against the South-Enders.[104]

It was generally felt however that communities which were run by "younger" better educated chiefs tended to be less corrupt with less tension within the communities than those governed by leaders around 50 years old. (This brings into question the value and wisdom of the elders).[105]

> ...corruption within reserve settings in Manitoba runs rampant to the point of gang wars between family blood lines. "Chiefs" get elected and use their power for the benefit of their own family and supporters. This tends to filter through to violent interactions and kickbacks either financial or political favors.[106]

Many within this age group (50's) were raised and educated in a violent and abusive milieu, with little political power. Once power through a council of elders has been given, that power is often mismanaged to the detriment of the community. The elders are often unqualified to advise in any capacity, having themselves been educated within a corrupt and abusive family.[107] This concern was shared by Glen Reed, a Crown Attorney on the Northern Circuit in Manitoba,

> In a native run justice system, there is a good chance of corruption along family lines. Warring families are the norm

---

[104]Interview with Aboriginal woman in Northern Manitoba, August 25, 1993.
Note: Holy-Rollers, Rebels, Brotherhood, Blood, Back-Lakers and South Enders are all conflicting factions that exist within given reservations and vie for power.
[105]Interview with Dr. Charles Ferguson, Sunday August 15, 1993, and Northern Manitoba RCMP August 18, 1993.
[106]Interview with Dr. Charles Ferguson, Sunday August 15, 1993.
[107]Interview with Dr. Charles Ferguson, Sunday August 15, 1993.

> and the family in power...usually the chief and his allies often work to the advantage of their friends. If they were given legitimate legal authority it could lead to an even more discriminatory system.[108]

Yet others disagree. The Honorable Judge Alvin Hamilton for example feels that the only way to alleviate Aboriginal over-representation in the criminal justice system is to allow Aboriginal peoples the right to self-government. Judge Alvin Hamilton believes that if Aboriginal peoples were entirely responsible for their own affairs, eventually the corruption would stop. He used the youth justice system in St.Teressa as an example.

> ...in St.Teressa, hardly any of the people are seen in the youth court because they have sensitive police, and a youth justice commission that works with offenders in a sensitive way and a way that is understood and accepted by aboriginal people. This is needed in remote communities as well as in the city. Those against change don't see the reality and the harm caused by the present system.[109]

The youth court [Ste. Teresa] referred to by Judge Hamilton has been in existence since 1984. According to Ken Wood, Chief of the community, the results have been a significant reduction in crime with the entire community taking responsibility for its youthful offenders. The Elders teach traditional values and the chief and counsel work together in providing Community Service Work sentences through a peace-maker process. The death of J.J. Harper was the spark that set the program in motion.[110]

---

[108]Interview with Glen Reed, Crown Attorney on the Northern Circuit, August 23, 1993.
[109]Interview with Hon., Alvin Hamilton, Court of the Queen's Bench, Winnipeg, August 26, 1993.
[110]Interview with Chief Ken Wood, Co.-worker of J.J. Harper and Chief of the St.Teressa Point reserve, August 26, 1993.

Although much of the above was obtained through interviews with primarily non-Aboriginal professionals, a great many Aboriginals in both Ontario and Manitoba expressed concern with regard to contesting factions within their communities. It is therefore important that the dynamics of the community be evaluated before independent Aboriginal control over community based policing is established. Carol LaPrairie in her studies of community-based policing agrees it must be approached cautiously:

> The limited community-based work that has been undertaken has either theorized broadly about crime in different communities, has narrowly focused on police findings, without a corresponding analysis of community life, or provided comparative crime data but again without reference to the community context.[111]

Depew tends to agree, stating that many Aboriginal community policing problems may be more closely associated with issues of social disorder as opposed to serious criminal activity.[112] Loree too addresses the issue, arguing that,

> ...the police can often find themselves caught in a three jawed vise: between political, economic and social realities of Native communities, and external society's conception of law and law enforcement, and the needs and demands of the police organization per se.[113]

An Aboriginal RCMP constable working out of Williams Lake, British Columbia, referred to this very issue:

---

[111] La Prairie, Carol "Who owns the Problem? Crime and Disorder in James Bay Cree Communities, Canadian Journal of Criminology, 34 (1992) p. 421.

[112] Depew, Robert, "Native Police in Canada: A Review of Current Issues" Report (Ottawa: Solicitor General of Canada, 1986) p.23.

[113] Loree, D.J. "Policing Native Communities" in Aboriginal Peoples and Canadian Criminal Justice, p.99, edited by R.A. Silverman and M. Neilsen, 1992.

> [I get] the feeling that although many in my community respected me, there were also a large number who feel I'm nothing more than "a white man in red skin" and therefore am worthy of less respect.[114]

Thus, even though the majority of the recommendations for the alleviation of police/Aboriginal tensions tend to support a community-based model of policing, more thought must be put toward its benefits both for Aboriginals and non-Aboriginals alike. The problems that exist tend to be a cornucopia of social issues with which police regardless of their ethnicity are unequipped to deal. Two such issues that became evident during interviews with police and legal professionals in the north were the problems associated with substance abuse and family abuse.

IMPACT OF SUBSTANCE ABUSE

Alcoholism and substance abuse is an aspect of Aboriginal criminality that arose in every discussion with every representative within the system; including the Aboriginal people themselves. Several police officers and a Crown attorney on the northern circuit, from the onset, made it clear that not all Aboriginal peoples were abusers and criminals,

> ...there are a large number who are law abiding, productive citizens. But criminal activity and alcoholism and substance abuse is a normal state of affairs whether one participates in them or not.[115]

During the course of the research, particularly in northern Manitoba, it appeared as if the degree to which substance abuse and subsequently

---

[114]Interview with an Aboriginal RCMP constable, Williams Lake, British Columbia, December, 1992.

[115]Interview with Larry Hodgeson, Crown Attorney on the Northern Circuit, August 23, 1993.

lawlessness took place had a direct link to the leadership of a given community. One officer from northern Ontario enforced this view by stating,

> The degree of lawlessness on a given reserve correlates directly with its leadership. If the chief is a drunk, then the reserve is usually nothing more than a drunk tank.[116]

Although it was expressed by both provinces that the majority of reserves are "dry" and isolated from mainstream society, police intervention occurs most often in instances involving drugs and alcohol.[117] The topography of the north tends to lend itself to a black market trade in both alcohol and drugs. Most remote communities possess at least one float plane which is often used in the transport of illicit substances. Due to the many lakes in the north these planes are able to fly in and out virtually undetected. In fact, there is one unit of police officers in northern Manitoba that exclusively patrol by air in hopes of stemming the problem, yet this method has proven to be relatively unsuccessful.[118] In addition, "moonshine" a home-made form of alcohol is also produced. This too is difficult to detect and because of the lack of any regulation as to the substances therein, it often poses serious health problems including blindness.[119]

The actual consumption of alcohol and drugs is only one symptom of the problems that develop from this activity. Another outcome of substance abuse is the production of dysfunctional marriages. Several

---

[116]Interview with OPP, Northern Ontario, May 12 1994.
[117]Interview with RCMP, Thompson Manitoba. August 16, 1993.
[118]Interview with RCMP, Thompson Manitoba. August 16, 1993.
[119]Interview with RCMP, Thompson Manitoba. August 16, 1993. Statement confirmed by Dr. Charlie Ferguson who added liver problems and ulcers to the list of possible maladies.

officers noted that on reservations where substance abuse was prominent, many of the marriages are based on drinking or drug relationships.

> There's no inbreeding. They're careful of that. But drinking couples only work when they're drinking. When they're sober, they hate each other beat each other up, then get drunk together.[120]

Although the problems associated with substance abuse in the north are well known, there are very few local facilities that are available to treat the problem. Of the surveys returned to the researcher from Northern Ontario, all indicated that alcohol abuse was a problem in their community, however only eight of the twenty-six indicated that there were programs to deal with alcoholism and drug abuse. Of that eight, all were run by community members in line with Alcoholics Anonymous. Four of the eight indicated that although the programs were available, they did not appear to be successful.[121]

> People aren't sent to Detox, often it is recommended on probation but there's nowhere to get it and it costs too much to send them out for treatment. They don't have the money to go. Some places have a Native Alcohol Dependency program but I don't think it's effective, if it really exists.[122]

This situation led a doctor and police advisor in family abuse cases to remark, "treatment of substance abusers or family abusers is just a phase we're going through. It's vogue so we're playing the role but what is needed is a treatment program that actually does something"[123] It was

---

[120]Interview with Aboriginal woman in Northern Manitoba, August 25, 1993.

[121]The success of the programs was not a question asked, the responses were given on the respondents own accord.

[122]Interview with Aboriginal Band Constable August 25, 1993.

[123]Interview with Dr. Charley Ferguson, August 26, 1993.

argued that in order to solve the problems associated with substance abuse, you have to begin at the community level , if you increase community self-respect and give them something to do problems would look after themselves.[124]

Substance abuse on reserves is not exclusively alcohol abuse. Illicit drugs and sniffing of gasoline and aerosols also play a role. Police officers however are most concerned about the erratic and unpredictable behaviour that is revealed among persons sniffing. One officer in northern Manitoba expressed his fear saying "sniffing is scary, I'd rather deal with a hundred drunks". He went on to give an example of the methods used to confine sniffers when they are picked up by the police:

> When they come in, we have to strip them down to their underwear, without a blanket because they will use their clothes or the blanket to keep the fumes in. Often we have to shackle them and put a helmet on them to prevent them from hurting themselves. We joke about it, "Someone just made the team"; I know it's terrible, but the whole situation is terrible.[125]

Dr. Charlie Ferguson expressed his concern over the prominence of sniffing and the highly addictive effect it has on Aboriginal peoples. It was his opinion that once an Aboriginal person has become addicted, there isn't much that can be done to alleviate the problem. In his opinion, "you can't do anything with sniffers, just warehouse them until the effects are gone". According to Dr. Ferguson, sniffing propane causes permanent nerve damage, whereas gasoline or aerosols are primarily psychotic. It was suggested that although professionals in the field of addiction are

---

[124]Ibid., Dr. Charley Ferguson.
[125]Interview with Aboriginal Band Constable August 25, 1993.

aware of the problems associated with sniffing, there has been little done to resolve the problem. Part of this inactivity stems from the fact that there has never been a proven link between sniffing and child deficiencies as there has with alcohol. If no permanent effects such as foetal alcohol syndrome or nerve damage occurs, agencies tend to focus more on substances that cause permanent damage. In addition, the prevalence of sniffing in many reserve communities has died down a bit since leaded gasoline has been taken off the market, because the unleaded gas produces side effects such as vomiting.[126]

Both the Bands and the police have recognized that sniffing and alcoholism are serious problems on many reserves and that this leads to Aboriginal criminality. For this reason, no sniffable substances are sold on the reserve other than gasoline which is necessary for the operation of vehicles on the reserves. This leads to an increased need for enforcement of these bans and adds to the black market sale of banned goods. For example, on most reservations it is possible to purchase raisins and sugar. These are in turn used for "home brew"; however, a necessary ingredient in the fermentation process is yeast. Hence, people pay up to $40 for a package of yeast on the black market. However, if you consider that a "Micky" of "home brew" can cost up to $80 it is often considered worth the money and the risk to smuggle it in.[127] Smuggling is performed by a wide range of people Aboriginals and non-Aboriginals alike. Stories were related to the interviewer of Alcohol and other such contraband smuggled in with nurses who weekly arrive at the medical stations. Another incident involved substances arriving with building supplies when the

---

[126]interview with Dr. Charlie Ferguson, August 26, 1993.
[127]Interview with Aboriginal Band Constable, August 25, 1993.

winter roads are accessible. Both Drugs and Alcohol are often "imported" in the winter months where accessibility by snowmobile to hidden sites is easier. In most but not all cases, the individuals smuggling prohibited substances *are* residents of the community.[128]

The result of alcohol and substance abuse is seen in terms of higher rates of violent crime primarily directed toward family members or friends. Of all the charges laid on the reserves, physical assaults and family abuse tends to be the highest, followed by break and enter (most of which occur within the reserve and 99% were described as involving either alcohol or sniffing).[129]

Policing in northern remote communities then involves daily association with alcoholism and substance abuse. However, there is little specific training that prepares officers in coping with these problems. It was related to the researcher that the tricks of the trade are learned on the job and you either learn how to cope with it or you leave.[130]

FAMILY ABUSE

Violence against the family is another issue that stems from substance abuse but since its impact on the criminal justice system is so prominent, it deserves a section on its own. Family abuse and domestic situations are always a dangerous assignment for police. Even in middle class Non-Aboriginal neighborhoods, two officers always respond to domestic calls and they are always extremely cautious. When alcohol is introduced into the equation, the situation becomes even more volatile.

It must be made clear that domestic violence is not an aspect of traditional Aboriginal culture. In the past, and even today, the family is a

---

[128]Information gained from police and Aboriginals in Northern Manitoba.
[129]Interview with Glen Reed, Crown Attorney on the Northern Circuit, August 23, 1993.
[130]Interview with RCMP, Northern Manitoba, August 18, 1994.

central aspect of Aboriginal society that is highly valued. However, when the scales are tipped by the use of drugs and alcohol, family assault is often the outcome. Child and wife abuse in the past, was seen as a "white problem". Dr. Ferguson suggested that in the case of child and wife abuse there appears to be a difference between Aboriginals and non-Aboriginals, with non-Aboriginals, it usually doesn't involve alcohol, with natives it almost always does.

Wife abuse is a serious problem on many reserves. However, it was indicated by at least two officers and one Aboriginal female that the statistics based on court records may be highly inaccurate since in many cases it is the woman who initiates the violence.

> Wife abuse, yes, but a lot of husband abuse too. A lot of times the man won't say that he was hit first or whacked on the head with a beer bottle first. A lot of times they are just retaliating. Native women are very aggressive when they've been drinking and even when they're sober.[131]

In addition, it was apparent that there is a great deal of family violence that goes unreported. There are two main reasons for this. First, the practical issue involving the need for assistance in survival and second, the community's reluctance to publicize the problem. One Aboriginal woman put this clearly stating,

> ...there's a problem when you charge your husband. Who's going to look after you, get the water or chop wood for the winter? He may be a drunk but he still looks after you. Plus, everyone will know you did it, his family will know and then you'd have to live like that.[132]

---

[131] Interview with Aboriginal woman in Northern Manitoba, August 25, 1993.
[132] Interview with Aboriginal woman in Northern Manitoba, August 25, 1993.

There is also the impression among Aboriginals in both provinces that if they are to be charged with abuse, they will be treated differently by the system than Non-Aboriginals.

> ...we are treated different, this guy punched his wife but there was some argument if whether he actually punched her or not, but he was charged and put in jail. They gave him a blanket and a mattress. He tried to hang himself by ripping off a strip of the blanket, they charged him with mischief for ripping the blanket. When they did that, he ripped the phone from the wall and he was charged for that too. But, a kid in Winnipeg stuffed a blanket in the toilet and flooded the place, broke all the plumbing, and nothing was done.[133]

Ontario Aboriginals too felt they were treated differently by the system with respect to abuse, "if you're white and you smack your kid, its called discipline, if you're Indian and you smack your kid, it's called Child Abuse".[134]

Even though crime statistics reveal a substantial amount of family abuse among Aboriginal peoples, abuse and suicide are still considered taboo. This often makes it difficult for police and investigators to get Aboriginals to talk about issues leading up to instances or to admit if they exist at all. In many cases, the communities already feel they have a negative stereotype and don' t want to add to it.[135] The result however is that there is still a very high rate of child mortality in Aboriginal communities. Over half the children die and these are generally from violent death or suicide. It's not rare to have more children in a family dead than alive. Many of the children just disappear.[136]

---

[133]Interview with Aboriginal woman in Northern Manitoba, August 25, 1993.
[134]Interview with Aboriginal in Northern Ontario, May 14,1994.
[135]Interview with Dr. Charles Ferguson, Sunday August 15, 1993.
[136]Interview with Dr. Charles Ferguson, Sunday August 15, 1993.

For the police, the issue of spousal abuse generates a different set of problems. The criminal code requires police to lay a charge in cases of spousal abuse but according to police, the offender is most often summarily discharged. In addition, police complained that it is common for a serious offences such as aggravated assault or assault with a weapon to be dropped to public mischief or fighting.[137] This has led to a great deal of frustration among officers in Northern Manitoba. It appeares however that the Ontario courts take Aboriginal assault cases more seriously. During the course of the research a rather disturbing impression developed, it appeared that in both provinces that at least on a superficial level, police had the attitude that as long as Aboriginals kept the violence among themselves, it was not a major issue. Police from both areas made a point of informing the researcher that there is little cross-cultural violence in the north and that if there is an assault involving an Aboriginal, it is generally against another Aboriginal. Police officers also indicated a degree of the frustration in dealing with the court system. It was felt that the judges did not take the assaults that occur on reserves seriously enough.

Most police officers interviewed, OPP and RCMP alike indicated that policing Aboriginal communities was in many cases easier than policing non-Aboriginal communities. However, they felt that if the problems associated with sniffing were eliminated, the job would be easier still. It was their observation that Natives are relatively cooperative even when drinking. The accused may put up a scuffle but quickly submits to police and follows instructions.

---

[137]Interview with RCMP, August 18, 1993.

Non-Aboriginals on the other hand often require more physical restraint and are more likely to challenge officers.[138] Interestingly however, this impression did not hold true for Aboriginal women. In the case of women the exact opposite opinion was expressed. One police officer stated, "I'd prefer to deal with an entire community of sniffers flipping out than any one woman. They are brutal, it usually takes at least two officers to restrain them when they get going".[139]

In addition, police in both Ontario and Manitoba generally have little involvement with the more minor offences. Reserves in both provinces are primarily policed by the chiefs and band constables. "They have a lot of autonomy on the reserves and the RCMP are only called in for serious offences like murder or aggravated assault. All the rest are handled by the Reserve".[140] It is also important to remember that most of the violence that occurs on reserves is between families and it is unusual for whites and Natives to come into conflict with each other.[141]

Band constables operating on the reserves have a different experience however. Not only do they deal with a higher aboriginal case load, (most offences are low level summary conviction offences) but they must also deal with the politics and family pressures that exist on the reserves. One reserve resident put this problem into perspective stating,

> I feel sorry for the band constables, often there's a problem and they are called up in the middle of the night by irate relatives accusing them of being unfaithful to the family [person arrested or detained is a relative].[142]

---

[138]Interview with RCMP, Thompson Manitoba. August 16, 1993.
[139]Interview with OPP, Northern Ontario, May 21, 1994.
[140]Interview with RCMP, August 18, 1993.
[141]Interview with RCMP, August 18, 1993.
[142]Interview with Aboriginal woman in Northern Manitoba, August 25, 1993.

In addition, police and band constables indicated that the fall months on the reserves are very busy in that many, particularly the Aboriginal youth seek to be arrested or detained in order to avoid the necessity of spending another winter on the reserve.[143] Dr. Ferguson however indicated that although "arrest and detention is equivalent to a holiday, it is often a choice over suicide".[144] Several officers in Manitoba said that "during the summer there are very few serious offences, however in the fall, serious crimes increase in the hopes of a winter vacation in the city".[145] Crimes that occur with this in mind however do not constitute the majority of serious crimes that occur on reserves.

Thus social problems in addition to the cultural, economic and geographic problems tend to undermine the rigidity of conventional law and law enforcement in remote Aboriginal communities often leading to a situation of inequitable treatment for Aboriginal people. Community-based policing may address some of the "cultural" issues of Aboriginals within the system; however, culture is only one facet of the social milieu. Before any substantial conclusions can be made regarding formal initiatives, the overall success of programs now in existence must be established.

---

[143]Interviews with band constables and police in Northern Manitoba.
[144]Interview with Dr. Charles Ferguson., Sunday August 15, 1993
[145]Interview with RCMP, Thompson Manitoba. August 16, 1993.

Chapter 5: The Effects of Location, Economic Disparity and Culture Conflict on Courts

Chapter 5: The Effects of Location, Economic Disparity and Culture Conflict on Courts

Many Aboriginal leaders have suggested that replacing "white" functionaries with Aboriginal ones will not solve the problems plaguing the criminal justice system. They argue that the conflicts will not disappear until Aboriginal people are able to establish their own autonomous justice systems based on tribal customs rather than Euro-centric laws. While once deemed too radical to be accorded serious consideration, this suggestion is increasingly supported by non-Aboriginal officials and politicians, non-Aboriginal dominated commissions and even the judiciary. The Royal Commission on the Donald Marshal, Jr. Prosecution determined that the justice system had failed Marshall at every point, from his arrest and conviction until his eventual acquittal by the Supreme Court of Nova Scotia, and that his Aboriginal status contributed to his mistreatment within the system. It was for this reason that the Commission recommended that the Micmac of Nova Scotia should examine, as a long-term goal, the possibility of instituting an autonomous tribal justice system based on indigenous concepts of justice. It further suggested that this approach should be implemented on a community-by-community basis, according to the needs and aspirations of community members[146].

The Aboriginal Justice Inquiry was in full agreement. In their words:

---

146 Royal Commission on the Donald Marshall, Jr. Prosecution, pp. 71-75.

* Federal and provincial governments should recognize the right of Aboriginal people to establish their own justice systems as part of their inherent right to self-government. It is also recommended that these governments assist Aboriginal people to establish Aboriginal justice systems according to the wishes of the communities; and

* Aboriginal communities be entitled to enact their own criminal, civil and family laws and have those laws enforced by their own justice systems. If they wish, they should also have the right to adopt any federal or provincial law and to apply or enforce that as well.[147]

The recommendation to establish community-based courts has received a great deal of support from both Aboriginals and non-Aboriginals alike. There are two main reasons for this sweeping support. The actors presently working in the system welcome any proposal which would eliminate the need to fly into remote communities, where they are pressed to clear a court docket quickly so that they can fly off to the next community. In addition, many of the problems that arise with respect to circuit courts could be eliminated if the courts were community-based, and did not need to rely on appropriate weather conditions and the mechanical good-will of the planes. Aboriginal communities also welcome any proposal which would accord them the ability to control their own communities and deal with deviance and crime in their own culturally appropriate fashion. Community-based courts would not only alleviate the cultural conflicts that Aboriginals find within the system,

---

147 Hamilton & Sinclair, Report of the Aboriginal Justice Inquiry, Vol. 1, pp. 734-735.

but would also place responsibility for social control in their own hands thus allowing the local legal culture and community cultures to merge.

Problems With The Present System

In general terms, it can be argued that the court systems in Canada have made many concessions in their battle to make justice more accessible to the Aboriginal peoples. However, the obstacles to justice within the present judicial system appear in many cases to be insurmountable. In addition to the general problems of court administration, Canadian courts dealing with Aboriginal peoples also face issues of geographic isolation and culture conflict, each of which present unique problems in the fair and equal treatment of Aboriginal peoples.

Although peoples of Aboriginal ancestry are scattered throughout Canada, and many are moving from their rural communities in the north to urban communities in the south, the majority of the Aboriginal population still resides in the Northern regions of Canada.[148] This presents unique difficulties in providing court services and insuring equal access to justice. Presently, this problem has been dealt with by way of circuit courts that fly into many of the remote Northern communities.

The province of Manitoba provides a good illustration of how the circuit courts function. Presently, Manitoba has two criminal trial courts and one appellate court. The Court of Queen's Bench hears the most serious criminal cases and sits with a judge or a judge and jury. However, 95% of criminal cases and all youth court matters are heard in Provincial Court by a judge who sits alone.[149] In all cases, it is the Provincial Courts that provide circuit court service . In some areas, such as Thompson,

---

[148]Griffiths, Curt T., Simon N. Verdun-Jones, Canadian Criminal Justice, 2nd Ed. p. 633.
[149]Hamilton, A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry Vol. I, p. 220.

Manitoba, the Provincial Court Judge, presides over Court of Queen's Bench cases and Provincial Court cases.[150*]

The Provincial Court operates over 50 circuit courts out of six provincial centres in Manitoba,[151] Thompson being one. The Thompson circuit services approximately 20 remote communities, flying into all but one. [152]

Generally the frequency of these visits depends on caseload and location. However it is not unusual for some communities to be visited only once per year.[153] In addition, winter conditions often delay flights due to storms. In spring and fall, delays can be caused by problems with break-up and freeze-up on the lakes and rivers. Added to climatic conditions is the fact that many of the runways in these remote communities are gravel-based and can be rendered unsafe by heavy rains. The scheduled court dates therefore can be at best unreliable. Further, because many locations are visited only on a limited basis, circuit courts are generally tightly scheduled.[154] Thus, a cancelled flight may very well mean that the court cannot visit a given community for another month or six months as the case may be.

---

[150]Interview with Murray Howell, Provincial Court Judge, Thompson, Manitoba, Interview (Thompson, Manitoba,August, 25, 1992).

* Although Judge Howell does preside over cases under both jurisdictions, he is limited to family related cases when acting in the role of a Queen's Bench judge. He does not here serious criminal code offences such as murder and aggravated assault or cases where judge and jury have been requested.

[151]Hamilton, A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba, Vol.1 p. 214.

[152]Most communities are accessed by air even if roads are available due to the vast distances that must be covered.

[153]Hamilton, A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba, Vol.1, p. 214.

[154]In most cases, it is not just the issue of dockets but also the expense incurred by the planes; Generally, two planes visit each community, the court plane and the police /sheriff plane which transports prisoners. With every court sitting, two planes arrive in the communities, one transporting the court staff, the other, those scheduled to appear before the court.

It is not uncommon for cases to be remanded or stayed because lawyers, witnesses, or the accused are absent from trial. If any of the above are not able to attend, the case is usually remanded to another date. Yet when the courts fly into these communities once or twice a month, successive remands could constitute a great deal of time between the incident and the actual trial. This leads to a great deal of difficulty on the part of defense lawyers and crown attorneys in that cases often overlap and become confused. In addition, those participating in the trial as witnesses or the accused him/herself, often mix up events. "They may have been involved in ten or fifteen assaults since the event and can' t remember exactly which one is being addressed".[155]

Cases are remanded for a number of reasons, many are remanded because a lawyer is not available or present or because information regarding the case hasn't arrive yet.[156] On the other hand, others are remanded because the accused or witness don't show up or are late. In many of the fly-in communities, Aboriginals often wait till they hear the planes arrive before getting out of bed to head toward court. This often leads to delays in court since it is not unusual for problems to arise in getting to the community centre or where ever court is being held.[157]

The problems in getting to court are not always preventable. There have been cases where Aboriginal peoples have made every attempt to get to court on time but due to weather conditions or other external natural

---

[155]Interview with Judge Murray Howell, August 25, 1993.
[156]Interview with Judge Murray Howell, August 18, 1993.
[157]Interview with Dr. Charles Ferguson, Sunday August 15, 1993.

forces[158], they arrive after court has finished, only to have to return at another date.[159]

Working in remote communities therefore creates situations that are not experienced in more urban areas. The ability to organize administrative matters also becomes problematic.

> ...there's a real problem with the estimation of time required for cases because you never know who will show up, so we book as many as possible on the docket.[160]

This issue was made evident to the researcher during the observance of court proceedings on one remote reserve. Police laid charges of abuse against a husband of a woman and subpoenaed for her to be a witness. The subpoena was served and accepted in person but the woman did not show up. The Judge asked legal aid to call an RCMP constable and have them go pick her up at home. The case was stayed till later in the day. The woman never did show up that day.[161]

Added to the physical problems of providing services to remote communities, fly-in courts also have obtained the reputation of being biased in favor of the Crown. This situation arises for two reasons. First, it is necessary for financial reasons that the Crown Counsel, Judge, court reporter and defence counsel (or legal aid[162]) travel together on the same

---

[158]Although many communities have a central service area housing a community centre, the northern store, schools and an arena, most individuals do not live particularly close to this centre. In some cases individuals must travel several hours just to get to the court location (generally a community centre or school gymnasium).

[159]Interview with Crown Attorney, Northern Ontario, May 13, 1994.

[160]Interview with Judge Murray Howell, August 18, 1993.

[161]Observation in Court August 18, 1993.

[162]Although Legal Aid is prepared to pay for members of the private bar to represent accused, Legal Aid does not pay transportation time or costs to communities where alternative legal representation, either resident lawyers or traveling duty counsel, is available.

plane. Secondly, because of the extended periods of time these individuals spend together, an easy going familiarity often develops between them. "Often, Defense and Crown discuss cases before or after court. Why not?, In most cases they have both dealt with that individual"[163]

This type of familiarity however can and has often left the impression that cases have been decided before court opens.[164] Glen Smith, Mayor of Cross Lake, stated in an interview,

> It's not fair for the defence lawyer's clientele within this set-up. They can't get their full representation when everyone is making deals. The way the present system works, the outcome of cases are often settled before the court party has even arrived in the community.[165]

Add to this impression of familiarity the practical need for the Crown, defence and often the police to discuss the particulars of various cases and examine files before the court session begins and you are presented with a situation that appears very much to be biased.

As alluded to earlier, time also plays a critical role in the delivery of justice via circuit court. The problems with time rest on two issues. First, plane schedules are generally inflexible. Therefore, if the plane is scheduled to leave at 4:00 p.m. the court has to leave at 4:00 p.m. or wait until (or if) the plane can return. This has led to the impression that the court party often operates with "one eye on the clock" so it can depart on time. [166]

---

[163]Howell, Murray, interview (Norway House Manitoba August 25, 1993).
[164]Hamilton, A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba, Vol.1, p.231.
[165]Ibid, p. 231.
[166]Ibid, .p. 237.

> When people in the court party start looking at their watches and then speak of the need to hurry as the plane will be leaving at 4:00, the members of the community feel a lack of concern for their needs and their priorities.[167]

Due to the inevitable pressure to clear the court docket, cases, particularly those dealing with family matters and young offenders are regularly rushed through at the end of adult criminal dockets. The situation in some courts is so bad that (in some communities) family disputes are never taken to court at all.[168]

The fact that most circuit court dockets are so full and varied contributes to existing pressures on Court players to hurry the process. The methods by which cases are processed (Provincial Court Judges hear adult criminal cases, family cases and youth cases, all of them often on the same docket) add to this problem often leaving judges without the necessary time to deal carefully, thoughtfully and separately with family matters and young offenders.[169] This is duly noted by the community members that attend court. At this point, one may ask: Why not schedule cases in an orderly fashion in order to accommodate the judge's needs? The answer is because of the remote location of many courts (even within a given community), it is often difficult for witnesses, the accused or interpreters to make it to court on time[170]. Therefore, the order of the docket depends on the availability of the persons required.

---

[167]Ibid, p. 237.
[168]Ibid, p. 236.
[169]Hamilton, A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba, Vol.1, p. 236.
[170]Weather conditions, automotive breakdown, and the inability to estimate actual travel time to court--many Aboriginal community members although reserve residents live up to 20Km

> Most often cases are stayed until the people arrive. Failure to appear means failure to appear at all. If they are one, two or three hours late, that's OK, just as long as they show sometime during the court session.[171]

The role played by defence lawyers or legal aid lawyers in this restricted environment is by no means an easy one; because Aboriginal accused reside in remote communities and defence counsel reside and work in distant urban centres, the frequency and quality of communication between them is impaired. Thus, on an easy docket, the defence or legal aid lawyers generally have 30 to 40 clients to interview before court commences usually by 11:00 or 11:30 a.m. It is quite common that the Aboriginal accused never see or hear from their lawyer before their first court appearances. Thus, all business and discussions must be conducted just before court or during a recess.

Micheal Paluk, a legal aid lawyer from Thompson, expressed his feelings on this situation:

> ...the schedule of court sittings has meant that lawyers have not always been as accessible as they would like to be to their own clients in the communities served by the circuit court.[172]

It is humanly impossible for any lawyer to adequately prepare a defence for so many clients in such a short time. In addition, Court often commences well after the scheduled time. If however, court does start on

---

from the community center or location of court proceedings. Often this journey is undertaken on foot making exact estimates impossible.

[171]Hodgeson, Larry, Crown Attorney for Thompson, Manitoba. Interview, August 18, 1993.

[172]Hamilton, A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba, Vol.1, p. 235.

time, it is not uncommon for the first significant order of business to be a request for an immediate recess so the Crown and defence are able to interview witnesses or clients.[173]

Throughout a typical court proceeding, it is not uncommon for the court to come to a halt so that legal aid can have five minutes with their client before continuing. Often this break is at the request of the judge who is concerned with possible problems in the interpretation or translation of proceedings up to that point.[174]

The pressures of the docket and the real possibility that defendants will not reappear at a later date for trial often force duty counsel to conclude as many matters as possible without the required issuance of a certificate.[175] Because of the nature of the circuits, remanding cases which would certainly qualify for a certificate anyway would be an unnecessary waste of time in that a remand of the case until the next possible court date (often one month) would add to future dockets. In addition, the delay would increase the risk that some defendants might commit offences in the interim or fail to appear on the next date set.[176]

Remands, though a necessary part of the judicial process, often pose significant problems to the circuit court by adding to delays that add up on a monthly basis (see Figure 11.)

---

[173]Ibid.p.234.

[174]Howell, Murray, interview (Norway House, August 25, 1993) in addition to court observation.

[175]Certificates are forms authorizing eligibility for legal aid assistance. In cases where the individual wishes to plead not guilty and be represented by a lawyer through Legal Aid, the duty counsel will take his or her application and ask the judge to remand the case until the application can be approved, a certificate is issued by Legal Aid and a lawyer appointed.

[176]Hamilton, A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba, Vol.1, p. 235.

Figure 11.

Delays Incurred by Remands

Generally a typical Court process would develop as follows: [177]

-the accused appears in court and is remanded for appointment of counsel (legal aid);

-One month after the first appearance, when the court returns, the accused appears a second time and a second remand for one month would probably be sought by counsel for receipt and review of particulars, including witness statements.

- Two months after the first appearance, the accused appears again, at which time a third remand for another month probably would be sought for discussions between counsel leading to a guilty plea at the next date or a not guilty plea and the setting of a date.

- Three months latter, the accused appears again to enter a plea. If he/she pleads guilty, the matter could come to an end unless a pre-sentence report is sought and ordered. That can add two or three more months to the date of disposition, since probation services, which does not visit every Aboriginal community, must be contacted and arrange to see the accused. But if the accused pleads not guilty, a fourth remand is made directly to the hearing date. Hearing dates in most circuit points can be set within six months.

- Nine months after first appearance, the accused appears for his or her hearing. If the accused has chosen trial in Court of Queen's Bench, then a fifth remand (a committal) is made directly to the next assizes[178] three to six months away.

- Twelve to 15 months later, the accused's trial might occur in Court of Queen's Bench. This also assumes that there have been no unusual requests for remands such as resetting trial dates because witnesses or accused fail to appear for trial, the accused fails to appear for remand, court parties are weathered out, etc.

From a practical perspective, cases that are remanded for extended (multiple) periods after the incident has taken place can create real problems for the people involved. Not only do witnesses and accused often mix-up events, but the lawyers involved have to repeatedly obtain and review the files and information. As well, the financial costs incurred by the Aboriginal community or the accused's family can be substantial.

---

[177] Hamilton A.C and Sinclair, AJI:Vol.I. (Province of Manitoba: 1991)p.236.

[178] the next available sitting of court

Eddie Ross, a God's River band councillor and volunteer probation officer, reported to the Aboriginal Justice Inquiry of Manitoba that

> A round trip (God's River to God's Lake Narrows[179]) costs $240. If a person knows they are innocent and can prove it by having a witness present it means they have to pay for the witness to go to the Narrows to testify. If the witness is employed it sometimes means they have to pay for lost wages too. So it is often easier to just plead guilty and pay a fine if the charge isn't too serious...More often than not our people travel to the Narrows, wait all day and then are told their case is remanded. This means they have to go home , wait until the appointed time and try to save enough money to go back again.[180]

Considering many Aboriginal people have low incomes, no vehicle, and are unable to hire transportation, incurring massive expenses only to see a case remanded can be a very frustrating experience.

> We heard of impaired driving charges taking over a year to be dealt with and of people being remanded eight and 10 times...It is clear that the system operates too slowly, and it is equally clear that Aboriginal people suffer disproportionately from this delay.[181]

If the accused is required to, or has chosen to appear in the Court of Queen's Bench, problems of delay and accessibility are increased.[182] Delays caused by the preliminary inquiry are substantial, and given the time needed to prepare and to hold a preliminary inquiry, the financial costs due to travel expenses are also extensive.[183]

---

[179]The nearest circuit court location.

[180]Hamilton, A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba, Vol.1, p. 239.

[181]Ibid., p. 242.

[182]Part of this increase in delay is attributed to the preliminary inquiry.

[183] If however the circuit court judge has dual jurisdiction such as Murray Howell of Thompson, Manitoba, most often the preliminary hearing is conducted on the plane before it

In Manitoba, of the 208 accused who had preliminary inquiries in 1989, the mean length of time from first appearance to preliminary inquiry was 228 days. The average time between the date of the preliminary inquiry and the date that the Court of Queen's Bench received the transcript was 78 days. The shortest time by which a transcript was received was a mere five days, while the longest was 307 days. One quarter of the transcripts were received in 48 days or less. Half were received in 66 days or less and three quarters were received in 93 days or less after the preliminary inquiry.[184]

What this indicates in real life terms is that the Aboriginal in custody awaiting his preliminary hearing has to wait longer than Non-Aboriginals under the same circumstances. [185] These delays are in part reflected by the length of time it takes between an accused's first appearance and the beginning of the preliminary inquiry (see Figure 12).

---

arrives in the community. However, even on his circuit it is often necessary for all parties to travel to the urban centre of Thompson for Court of the Queen's Bench proceedings.

[184]Hamilton, A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba, Vol.1, p. 248.* federal study re preliminary inquiries in Canada showed an average delay of five months due to preliminary Inquiry.

[185]More Aboriginal than non-Aboriginal people are kept in custody awaiting a preliminary inquiry, due to bail being refused or their inability to meet bail conditions, which means that delays caused by the preliminary inquiry have a more adverse affect on Aboriginal people.

Figure 12.

Delays incurred due to Preliminary Hearings

A Typical Case:

1- Charges are laid for an indictable offense

2-The accused elects trial by judge and jury at the first court appearance

3 -Two months pass

4- The preliminary inquiry is convened, at which the accused consents to trial or is committed as originally charged following the testimony of two or three Crown witnesses.

5- Two or three months pass, during which the accused may re-elect down.

6- The trial begins; the accused pleads guilty, and the verdict is rendered the same day, usually in a matter of hours.

An average of 61 days elapsed before the preliminary hearing begins.

An average of 82 days elapse between its conclusion and the start of trial.[186]

This however does not mean that the accused simply is required to spend more time in custody, it also means that the expense to the family of the accused rises in proportion to the length of his/her case.

Delays within the system in combination with a general lack of understanding of the processes involved have led Aboriginal peoples to believe they are treated as second-class citizens in a court that is meaningless to them. In fact, some presenters to the Aboriginal Justice Inquiry referred to the process as a "kangaroo court" and a "make-work project for lawyers" in lieu of its intended role in the administration of justice. The result of this impression has been that Aboriginal accused tend to spend less time with their lawyers, and Aboriginal accused are

---

[186]Hamilton, A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People, Volume 1 (Winnipeg, Queen's Printer, 1991) p.248

more likely than non-Aboriginal accused to appear without counsel at all.[187]

It is therefore not difficult to see how the structural elements in the judicial system could easily lead to a greater number of Aboriginal peoples receiving sentences of incarceration. The element of time plays a major role. Understandably, if an accused's lawyer does not have the opportunity to carefully consider his/her client's case, it is more likely that individual will be found guilty. Also, if the accused finds it more expeditious to plead guilty (regardless of guilt) than to pursue a plea of not guilty (requiring remands, witnesses) then he/she too will become a statistic. Finally, it may be preferable to accept a one month jail term rather than wait six months for an issue to be resolved.

Isolation and the great distances to and from communities become a factor when the expense of travel is taken into consideration. In many cases it is far more cost efficient to simply plead guilty and travel to and from jail at the court's expense than it would be to attend successive court appearances.

Thus, there is little doubt that the Aboriginal person's access to justice at least in the physical sense is severely compromised. Yet the Aboriginal's access to justice in an ideological sense is also compromised by the conflict in cultural values that has existed between our Euro-Canadian justice system and Aboriginal view of justice.

One cultural factor is that of community loyalty. Because many of the Aboriginal communities are isolated from main stream Canadian society and serviced by external institutions, the sense of community (of "us and them") develops. This community loyalty often leads to

---

[187]Ibid., p. 235.

difficulties within the court system. Larry Hodgeson, a Crown Attorney in the Northern Circuit in Manitoba indicated that the greatest difficulty he has is trying to get people to testify:

> Reserves are generally small communities with everyone knowing everyone else; politics aside, no one wants to testify against someone they know.[188]

It is very common for a complainant to refuse to testify against an accused at the last moment, often preferring to be in contempt of court rather than revealing publicly what they know.[189] "There is a lot of terrible violence that never gets punished because people won't testify".[190]

In addition, a reluctance to criticize the conduct of others in the course of one's testimony would likely be interpreted by the court as meaning one is not certain of whether a specific person was at fault. This reluctance to criticize others is often exacerbated by the trial process, which Aboriginals often find intimidating and loaded with cultural mannerisms they simply do not understand. This uncertainty and trepidation often leads Aboriginal witnesses to speak softly making them difficult to hear.

> During the Mashpee trial,...Judge Skinner said to an Aboriginal witness, "Think of yourself shouting across a field to those people", indicating the jury "over there". The Aboriginal witness continued speaking softly despite this direction,

---

[188]Interview with Larry Hodgeson, Crown Attorney Manitoba's Northern Circuit Interview, Thompson, Manitoba, 23 August, 1993.
[189]Ibid. Larry Hodgeson interview.
[190]Winnipeg Free Press, Sunday Aug.15,1993 pg. A9.

> although it no doubt angered and frustrated the judge and jury.[191]

Rupert Ross, an assistant crown attorney who wrote Dancing with a Ghost: Exploring Indian Reality, discusses similar behaviour among Aboriginal peoples in Kenora, Ontario:

> If I have one overriding impression of these people, it is of silent people. They rarely speak easily with me in private, and even less easily in court. I have watched them take the witness stand only to pull their jackets over their heads and stand there, shrouded and mute. Even when they have gone over their evidence with me in great detail before going to court, they regularly refuse to speak once they take the witness stand.[192]

For the judge, this often leads to difficulty in his/her assessment of the proceedings,

> Natives will not offer any information...They don't trust the system. This often leads to a fine line between extracting the necessary information and leading the witness.[193]

Another cultural issue that impedes the flow of justice in remote Aboriginal communities is language. Although many Aboriginal peoples speak English, there are still a large number, particularly in northern Manitoba who do not. In Ontario, this is not often a problem in that most of the Aboriginals interacting with the justice system speak English. Judge R. Stortini, stated that in all the time he has been on the bench he has never had need of an Aboriginal interpreter. Manitoba is quite

---

[191] Turpel, Mary Ellen, in Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues, (Ministry of Supply and Services Canada, 1993) p. 175

[192] Ross, Rupert, "Dancing with a Ghost": Exploring Indian Reality, (Markham, Octopus Publishing, 1992), p. 6.

[193] Interview with Judge Murray Howell,25 August, 1993.

different. There are a substantial number of Aboriginals in Northern remote communities that do not speak English. Interpreters are therefore necessary.

A basic problem is the lack of qualified interpreters. In addition, many different dialects are spoken often necessitating the need for interpreters from within the community. When this occurs however, the chances of obtaining an unbiased person is very difficult.

> ...there is a major problem with interpreters. Often it is very difficult to find non-relatives. Often interpreters side with one person and interpret inaccurately in order to support a friend or relative. Reserve politics also influence accuracy of interpretation.[194]

Crown Attorney Glen Reed agreed:

> ...the greatest problem is with interpreters. Most often the interpreter is associated with one of the families involved. This leads to a bias in the translation but I don't know Cree so it's hard to determine what's going on. What happens though is that sometimes the translation doesn't reflect the facts, then you know it's either the translator that is improvising or the accused or witness is lying.[195]

This rather chaotic system of justice in combination with the fact that many of the legal-aid lawyers and Crown attorneys use the northern circuit as a stepping stone for future employment objectives leads to a relatively high turnover rate of professionals in the North.[196] A similar situation holds true for the Aboriginal court workers in that not only do they have to deal with a "White" system of justice, it is their job to make

---

[194]Interview with Dr. Charles Ferguson, Sunday August 15, 1993.
[195]Interview with Glen Reed, Crown Attorney on the Northern Circuit, August 23, 1993.
[196]Interview with Legal Aid Lawyer, In the North, August. 17, 1993.

that system of justice understandable to those who receive it. Judge Murray Howell expressed the difficulty of this situation indicating that there is very little training available to court workers, thus most of the training they receive is on the job. Yet it was also expressed that for an individual to leave after having mastered the job is common. "There is a high turn over with court workers, its a hard job, especially if you have family in the community". The variable of familial association in connection with reserve politics often put court workers in very difficult positions.[197] Not only do these people have a responsibility to the court and their community, but they also must deal with pressures from family and friends.

SENTENCING IN THE COURTS

Geographic location and financial disparity also play a role in the sentencing process on reserves. As discussed earlier, many of the reservations are a considerable distance from service centres and detention centres. For this reason, there is a general reluctance among judges to give a sentence of imprisonment. The most common sentence an individual would receive therefore is probation.

> ...sentencing is generally in the area of probation. It works fairly well with first time offenders. The assistant probation officers usually reside near or on the reserves and the natives are usually pretty good about attending meetings. Few are charged on breach, but they are quite often recharged with offences stemming from alcohol.[198]

The perception of the success of this disposition however is not unanimous. It was related by both Crown Attorneys and police that

---

[197] Interview with Judge Murray Howell, August 18, 1993.
[198] Interview with Glen Reed, Crown Attorney on the Northern Circuit, August 23, 1993.

offenders placed on probation often do not abide by their conditions, yet often nothing is done about it.

> The most frequent disposition is probation. It's difficult for the probation officers because of their high case loads but we don't often get breaches, usually they are combined with other offences but this could be because the probation officers just aren't charging people with breach of probation.[199]

On the other hand, there are those who feel that probation itself is not taken seriously.

> There's a great deal of apathy among the Native people. They know they've committed a crime, and that it was wrong, they know they will be punished but it no great tragedy. Another day in the life on the reserve.[200]

Police tend to be more in accord with this view, according to one band constable:

> we get a lot of people on probation and most of them breach it but it isn't pursued because they are always stayed anyway. There are people out there with 14 to 25 breaches on their record.[201]

What makes probation the preferred choice of judges in the north is that it is an attempt at alleviating the costs to an accused's family members, both in financial terms as well as in survival terms. As indicated earlier, many of the individuals who come in contact with the law are needed by their family for the labour assistance they provide (provision of food, water, firewood) as well as the income they provide. If

---

[199]Interview with Judge Murray Howell, August 25, 1993.
[200]Interview with Larry Hodgeson, Crown Attorney on the Northern Circuit, August 23, 1993.
[201]Interview with Aboriginal Band Constable August 25, 1993.

an individual is incarcerated not only are they not able to provide these services, they will also be isolated from their community and family. The cost for a family traveling to a service centre that has imprisonment capabilities is generally in excess of $400. Thus the offender's family and support group would have little opportunity to visit the accused.[202] The accused is also denied the chance to reconcile the differences or the disharmony he/she caused within the community. Thus, when he/she returns, it is felt by many that nothing has been accomplished.[203]

It is not surprising then that culture conflict when combined with a service that is less than adequate has led to an outcry from Aboriginal peoples for a system of justice that is not only sensitive to their needs as remote communities but also allows for the cultural differences that permeate their communities. Unlike many cries that have been ignored, the demand for accessible justice is one that seems to be being heard.

SOLUTIONS

Presently there are approximately 400 justice projects now underway across the country created with the view of easing not only the administrative difficulties presented by remote communities, but which also focus on cultural compatibility[204].

The tribal courts referred to in the Aboriginal Justice Inquiry reflect these issues, for example, in the United States, approximately 145

---

202 Interview with Aboriginal Band Constable, August 25, 1993.
203 Ibid., Band Constable, August 25, 1993.
204 Turpel, Mary Ellen, in Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues, (Ministry of Supply and Services Canada, 1993), p. 179.

American Indian tribes have some form of their own functioning court system.[205] There are three basic forms :[206]

> **Traditional Courts.** These exist with the original jurisdiction established by traditional tribal laws, restricted only by express federal legislation. Their goal is to administer customary laws as supplemented by explicit tribal enactments.
>
> **Courts of Indian Offenses.** These courts are regulated by the Code of Federal Regulations and their jurisdiction is limited by the terms of those regulations to minor crimes and a narrow range of civil matters. Most of the law applied and the structure of the court are established by the federal government.
>
> **Tribal Courts.** These courts are governed solely by tribal constitutions and tribal codes passed pursuant to the Indian Reorganization Act and any express federal legislation.

The Indian tribal courts in the United States have jurisdiction over their members and other Indians who may happen to be present within the tribal territory. Thus an Indian who commits an offence within the Flathead Reservation is subject to the jurisdiction of the police and courts of the Flathead Tribe. A non-Indian however, who commits the same offence is subject to the jurisdiction of the State police and the State courts. This has led First Nations observers who have visited the United States and observed the American Indian Tribal justice system to criticize the issue of jurisdiction based on racial distinctions. It is their

---

[205] Native American Tribal Court Profiles (Washington,D.C.: Judicial Services Branch, Bureau of Indian Affairs, 1985) in A. Hamilton and C. Sinclair, Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People, p. 275.

[206] Ibid. p.276.

contention that differentiation based on race is both too complicated and an undesirable way of enforcing laws.[207] Jurisdiction should be absolute, based on territory, and devoid of racial distinctions.

In Canada, our closest approximation of tribal court systems can be found in Akwesasne Quebec[208]. In essence, the tribal court establishes its own code of behaviour and administers its own laws. Whereas such a system as this would be ideal, a temporary solution put forward by the Inquiry is that of adapting present court systems by way of Peacekeepers[209] or other native participatory action. The role of the Peacekeeper is based on the principles in alternative dispute resolution, a system which replaces the adversarial court process with a conciliatory method of dispute settlement. The Aboriginal Justice Inquiry saw the role of the peacemaker as being different from that of a judge. While a judge's role is to listen to admissible evidence, convict or acquit, and impose sentence when there is a conviction, the peacemaker's goal is the maintenance of stability within the community. In cases where there is an admission of fault, the peacemaker can try to rectify the harm caused by determining the issues that led to the inappropriate action and finding a remedy to the situation through consultations with those involved. [210]

---

[207]Mandamin, Leonard "Aboriginal Justice Systems: Relationships", in Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues, (Ministry of Supply and Services Canada, 1993), p. 297.

[208]For more information about Tribal Courts in Akwesasne Quebec, see Native Peoples in Canada: Contemporary Conflicts by James S. Frideres, (Scarborough: Prentice Hall Canada, 1993) pp. 390-392.

[209]Peacemaker and Peacekeeper are synonymous

[210] Hamilton A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People ,Vol. I, p. 374. also see "Resurrecting the Peace: Traditionalist Approaches to Separate Justice in the Kahnawake Mohawk Nation, by EIJ. Dickson-Gilmore, in Aboriginal Peoples and Canadian Criminal Justice edited by Robert A. Siverman and Marianne O. Nielsen.

A program which has been in existence since 1984, which involves a "peacemaker" system, is functioning in Ste. Teresa Point, a northern island community of Manitoba. In this community, a case committee, made up of two elders, two other adults and two youths, reviews charges against youth and decides how these charges should be handled. The options include directing the accused to their own youth court, to alternative measures hearings, to meetings with the chief and council or to go through the normal provincial court process.[211] The "peace maker" process here involves a meeting with the parents, accused and an elder to iron out disputes. The local court does not handle cases involving rape, murder and other violent crimes; these are dealt with in Provincial Court. Response to the program to date has been exceedingly favourable:

> The result [of the program] is a significant reduction in crime within the entire community...the whole community takes responsibility for its youthful offenders.[212]

Cpl. Craig MacLaughton, the officer in charge of the Garden Hill RCMP detachment concurred noting that in his two years of service in the area, only one case had been transferred to provincial court.[213]

The Sentencing Circle, a similar program found in Saskatchewan, deals primarily with adult offenders. To qualify for consideration by the sentencing circle, several characteristics must be present. The offender must be:

---

211 Winnipeg Free Press, Monday,Aug.16, 1993 p. B3.
212 A.Hamilton, Interview, Winnipeg, Manitoba, 16 August, 1993.
213 Winnipeg Free Press, Monday,Aug.16. 1993 pg. B3.

1-eligible for either a suspended sentence, an intermittent sentence or a short term of imprisonment (less than two years) coupled with a probation order,

2-be genuinely contrite

3-be supported in his/her request for a sentencing circle by the community in which he/she lived,

4-be honestly interested in turning his or her life around.[214]

In a sentencing circle, all the interested parties, friends and family of the offender, the victim, band elders, and other community residents sit in a circle with the judge, the prosecutor and defense counsel; all members discuss and participate in the sentencing of the offender.[215]

The Oji-Cree community at the Sandy Lake reserve in North Western Ontario operates in a similar manner. The judge, his clerk and three reporters sit at one side of a square of tables, the three elders and interpreter at another; at the side across from the judge sits the defence lawyers, offenders and their families together with probation officers and anyone else who may wish to address the court. The final section is occupied by the police officers involved in the case and the Crown Attorneys.

The elders bring to the court their knowledge of the accused and his or her family circumstances. Often the elders will meet with the accused, the victim and both their families in advance of court, the court adjourning cases as necessary to allow the elders to complete their investigation.[216] Again, the goals are rehabilitation, understanding of all

---

[214]The Lawyers Weekly: October 15, 1993; p.16. Case: R.v.Cheekinew, Sask. Q.B., Grotsky J., (Mar.2/93).

[215]Ibid. Lawyers Weekly, p. 16.

[216]Ross, Rupert "Dancing with a Ghost" p. 167.

aspects involved in the accused's actions, and establishing a method of healing or teaching which will in effect restore the balance between and within the individual and the community.

The involvement of the judge is often seen as making a crucial difference. The judge gives importance and significance to the Aboriginal justice initiative. The judge empowers the community process. He shares power with the community better enabling it to deal with conflict.[217] It is for this reason that the Northwest Territories Community Justice of the Peace Program established at Fort McPherson chose to utilize Justices of the Peace chosen from their communities rather than relying solely on a council of elders.

Fort McPherson is an example of a Community Based Court. Following some initial meetings between Judge Bruser[218] and some interested members of the community, a justice committee was formed. This justice committee, composed of a broad spectrum of people, including elders, began to come to court to say what they felt should happen to offenders from their community. Before the circuit court arrived in the community each month, the justice committee was provided with a docket of the offenders who were to appear before the Territorial Court. The committee would then decide which, if any of the matters before the court they wished to make representations on. Many communities have since appointed their own presiding Justice of the Peace who comes from the community and who understands what will work and what will not. At this point approximately 40% of the Justices

---

[217]Mandamin, Leonard "Aboriginal Justice systems: Relationships" in Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues, (Ministry of Supply and Services Canada, 1993), p. 286.

[218]Provincial Court Judge in the Northwest Territories who had previously been the attending circuit court judge.

of the Peace are Aboriginal. As well approximately 40% of these Aboriginal Justices of the Peace are women.[219]

This is not to say that these systems are not without problems. As in any institution, difficulties are bound to arise. The difference is that in cases such as this where the primary problem is getting Justices of the Peace who are prepared to "judge" people from their own community, Aboriginal peoples have the advantage of a strong community support network whereby responsibility is deflected to the community as a whole rather than a specific individual. The other problem is one which all institutions face, the lack of financial resources.[220]

Thus, the possibility of Aboriginal tribal courts either with or without the assistance or guidelines of the Euro-Canadian system is a viable one. The courts described here operate with varying success in the United States and to some extent in Akwesasne Quebec and Canada's North West Territories. In areas where it has been determined full community courts are not feasible (particularly in urban centres[221]), the system of

---

[219]Stevens, Samuel "Northwest Territories Community Justice of the Peace Program"Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues, (Ministry of Supply and Services Canada, 1993), p. 388.

[220]Ibid.p.389.

[221]With respect to urban Natives, downtown Toronto courts presently run a program in association with Aboriginal Legal Services referred to as the Community Council. The Director, Jonathan Rudin, is co-author of Native Alternative Dispute Resolution Systems: The Canadian Future in Light of the American Past (Ontario Native Council on Justice). The goal of this program is to provide an alternative to incarceration for Native offenders convicted of minor offenses. The program itself rests in a position following the guilty plea and before sentencing. The accused is given the option of being sentenced by the court or by the council. If the council is chosen, the offender is placed in the "custody" of the council. The council operates along the same principles as that of Peacekeepers; composed of community elders, it discusses the issues preceding the offense with the accused in an informal manner. Discussions however are not restricted to the act; rather, they focus upon the individual, his/her childhood, family, social situation, finances. Following the discussion (which may take several days) the council discusses how best to treat the offender. What action can be taken to heal the individual and restore him/her to a complete and whole person. Options may involve counseling, spending time on a reserve (preferably one from which they came), community service work or

peacemakers is not only possible, but viable. It is apparent however, that for a system to meet the majority of needs of Aboriginal people, there is a need for substantial changes in the court system as a whole be it complete structural change as recommended by the Aboriginal Justice Inquiry or be it partial change as in the use of elders or peacekeepers. Regardless of the options chosen, it is evident that the Aboriginal Community based courts and peacemaker systems are working to the satisfaction of both the Euro-Canadians as well as the Aboriginals. As has often been mentioned, each Aboriginal community is different, not only culturally, but also physically. This in itself demands something other than "the standard" mode of justice. Circuit courts are at best dysfunctional. They do nothing more than provide the illusion of justice. This feeling of fruitlessness was espoused by almost every individual interviewed with regard to this outdated mode of delivering justice.

The possibility of eliminating the need for circuit courts in favor of community based models of justice delivery is a positive one. For the Aboriginals, it would allow them to gain at least some control over the tensions within their communities. In addition, community based courts are far more accessible, understandable and cost effective to the people they serve.

If however, the present system of circuit courts was in fact functional and well received by the public and the actors involved, I am quite certain that efforts to act quickly on Aboriginal courts would have been far less aggressive. As it stands, the Aboriginal peoples are asking to provide a service no one else wants to provide and in so doing may be

---

addiction treatment.(Interview with Jonathan Rudin, Aboriginal Legal Services of Toronto, Community Council Director, April, 1993.)

able to produce a system that is comfortable, culturally sensitive and efficient. The prospect of a joint effort between Aboriginal peoples and Non-Aboriginal judges is also an avenue that has been considered. In Sault Ste. Marie Ontario, this notion has been favorably considered but to date, no action has been taken.[222]

The only arguments against Aboriginal community based courts focus on the political instability that exists in some communities. This concern is very real and could render justice void; however, this appears to be a problem in only some communities. Generally speaking elders seem eager to establish their own court system for the benefit of their citizens and are confident that their judgmental impartiality would remain intact.

---

[222]Interview with Judge R. Sortini, General Division Judge, Ontario, May 1994.

Chapter 6: Discussion and Conclusion

Chapter 6: Discussion and Conclusion

The purpose of this thesis was primarily to discuss the issues of culture conflict, geographic isolation and economic disparity as factors relating to the overrepresentation of Aboriginal Peoples in the Canadian Criminal Justice System. A second theme was to analyze the effects of these factors on the institutions of policing and courts both in terms of the physical and psychological barriers they constitute to equitable justice for Aboriginal peoples.

The second chapter of the thesis introduced three types of culture that exist in the north, community culture, ethnic culture and the legal culture. It was argued that all three of these play a role either in the overrepresentation of Aboriginals in the criminal justice system or in the administration of justice to remote Aboriginal communities. Because most northern communities are not located within a reasonable travel distance (less than a 4 hour drive) of one another, a local community culture emerges based on that community's unique beliefs, values and needs. One can not therefore assume homogeneity among all northern communities regardless of the ethnicity of the population. In other words, although many Aboriginal communities exist in northern Manitoba and northern Ontario, this does not mean that these communities are culturally similar.

It was further argued that when ethnicity is added to the equation, the possibility of mistrust and racism emerges sometimes leading to institutional racism. Institutional racism evolves when racist attitudes become imbedded within an institution such as policing and subsequently

influences the behaviour of professionals within the system. It is for this reason the local legal culture of a community or area often becomes viewed with suspicion. Because legal professionals must work in close association with one another on a regular basis in the north, the familiarity that evolves is often viewed as suspect by the Aboriginal communities they service. It is often felt that the justice received by these professional individuals is tainted by their obvious friendships. This mistrust in turn leads to a lack of confidence in the system as a whole and thus a feeling of disillusionment.

The effects of ethnic culture however run deeper than simple mistrust between cultures. Because Aboriginals experience a different world view than that of non-Aboriginals, their behaviour when confronted with criminal justice proceedings is often misinterpreted. Although each Aboriginal community is unique on a community basis, there are some similarities based on ethnicity. For example, when Aboriginals and the police interact, the silence and with-drawn reaction of the Aboriginal (his/her way of preserving their dignity in a stressful situation) is often seen as a lack of cooperation or insolence. In the courtroom, the avoidance of confrontation and the reluctance to testify often leave judges and prosecutors frustrated or worse, assuming guilt.

The result of culture conflict in a society base on equal implementation of the law is that cultural idiosyncrasies often lead to inequality of access to the institutions of justice. Aboriginals often feel that they are not treated fairly by the system and thus refuse to participate.

Geographic location also plays a role in this sentiment. Because the institutions of justice (police headquarters and courts for example), are

most often several hundred kilometers away from the communities they serve, it is felt by Aboriginal peoples that these services are not available to them. In addition, when police are required to enter the communities, it is quite often to arrest someone. To the community, this is often seen as an intrusion. It is the opinion of many Aboriginals that the police only come to make arrests.

The solution put forward by many reports is that of community-based policing. It is expected that community-based or Amerindian policing would reflect Aboriginal beliefs and values or at least make an effort in understanding these different value structures. Research found however, that there are some problems with this approach. First, it was indicated that some residents felt Aboriginal police officers working in their communities were nothing more than "Indians" enforcing "White" laws. It was also a concern that band-constables were over-zealous in charging individuals. This was evidenced in the over-charging by police band constables in Castle Dame and Deep River. A final concern expressed by both police officers and Aboriginals in Manitoba was that of the effect of corruption on community-based policing. It was proposed by some, that factionalism within communities sometimes leads to the lack of reporting criminal activity for fear of reprisals from those in power. It was also suggested that only those without backing of the power families ever get as far as court. Others are never detected.

Community-based policing therefore has both its supporters and its critics. Some studies have found it to be very effective but others found it unacceptable. Most remote Aboriginal communities today operate with some form of community based policing yet Aboriginal incarceration rates

are still disproportionally high leading one to doubt the success of these programs in stemming the flow of Aboriginals into the system.

Community-based courts however seem to show some promise. Although few in number, the community-based or community interactive courts presently in existence appear to be more successful than the traditional "circuit court" mode of adjudication. Not only were circuit courts seen as foreign and culturally insensitive to Aboriginal communities (despite efforts at implementing Aboriginal court workers and interpreters) but the "fly-in-fly-out" service also made it difficult for accused to consult with legal council due to the time constraints caused by flight schedules. In addition, flight schedules were often delayed or canceled due to weather or mechanical problems. The cost in time and transportation for Aboriginals in such instances can be high, particularly if the court does not fly into that community more than once or twice a year.

The circuit court method was also criticized by the actors within the system. Not only did they often feel rushed and ill-prepared due to flight schedules, but they also felt deprived of the ability to consult adequately with their clients. This in turn often led to remands which further stressed the court dockets and further imposed on the time and finances of Aboriginal peoples.

It is not surprising then that the notion of community-based courts is well accepted by both Aboriginals and court staff. For the Aboriginal, community-based courts would theoretically ensure greater sensitivity to their cultural needs and be far more physically accessibe. For the legal professional, the stresses involved in providing justice to remote Aboriginal communities would be resolved.

Most professionals interviewed agreed that the circuit court did not function adequately and agreed that any change would be better than the system presently in existence. The only concern with regard to community-based courts revolved around the possible corruption that may exist within a given community making impartial adjudication extremely difficult. This appeared to be more of a concern in Manitoba than in Ontario. In fact, research indicated that the issue of corruption although present in some Ontario communities, was rarely reported to result in violence. In Manitoba however, violence seems to be a relatively common outcome of the power struggles that exist.

In general then, this research has clearly shown that the issue of Aboriginal justice is a complex one that cannot be addressed lightly. Aboriginal communities are as diverse as the Aboriginal peoples themselves and their individuality must therefore be treated with respect. Broad assumptions of what is best or most appropriate for Aboriginal justice must be considered with extreme caution. The issues discussed in this thesis regarding the police and the courts have made this evident. Aboriginal self-determination of justice systems has been raised as a possible solution by Hamilton, Sinclair and others on several occasions. However,again, one must remember that not all Aboriginal communities are starting at the same point on the developmental scale. Many reserves face abject poverty, social and political instability and isolation which would put them at a distinct disadvantage, and perhaps doom them to failure. Such failure at this point in time might well force them back into a relationship of even greater dependence.

A greater understanding of Aboriginal cultures, in combination with greater Aboriginal representation within the controlling institutions

of our society, seems to be the direction the literature points to at this point in time. This is not to deny any future goal of Aboriginal self-determination. Complete self-determination for Aboriginal peoples must remain the ultimate goal. However, until all communities are equally prepared to proceed, sweeping policies should be avoided. In the interim incremental change in favor of greater Aboriginal participation and direction in the system must be considered.

It is evident that reforms discussed over the past 20 years have not had a substantial impact on the rates of Aboriginal criminality. In addition, although many reforms in the areas of policing and courts have made these institutions more sensitive to Aboriginal culture, they have not dealt with the basic problems associated with poverty and its symptom, substance abuse.

Generally, this thesis paints a dismal picture of the Aboriginal condition as it stands today. Yet it should be emphasized that although the situation is serious, even desperate, many communities have united and with the cooperation of the entire community, have decreased crime and increased their standard of living. Not all communities are corrupt and not all individuals within dysfunctional communities are participants in illegal activities. It must be remembered that the majority of Aboriginal peoples are law abiding, productive individuals. The goal of Aboriginals today then, should be to make their communities more sensitive to the needs of the majority. In other words, peaceful and productive.

This is not to say that the Canadian criminal justice system does not have any responsibilities in this regard. It has been made exceedingly clear through the course of this research that the system itself plays a

role in Aboriginal criminality. Circuit courts for example provide nothing more than the illusion of justice due to their lack of understanding with regard to community dynamics and their inconsistent availability. Community based policing is also ineffectual at stemming the flow of Aboriginals into the system even though it is more sensitive to their needs culturally.

It is evident then that the factors addressed in this thesis, culture conflict, economic disparity and geographic isolation do in fact all play a significant role in Aboriginal overrepresentation within the system. Thus, all must be addressed if any significant changes in the crime rates of Aboriginals is to be expected. Ameliorating cultural differences in a situation of abject poverty will do little to stem the problems of substance abuse, and making remote areas more accessible will not decrease cultural insensitivity. If all are addressed together, some progress may be detected.

There is however another factor that must be addressed in order for any reforms to be successful. This added factor is cooperation. Not just cooperation between Aboriginals and the Non-Aboriginal majority but cooperation among differing Aboriginal communities is also paramount to the success of any reforms within the system. It is possible that the presence of cooperation, at least in part, is a moderating factor in Ontario with respect to Aboriginal criminality. Ontario Aboriginals, particularly in the more southern areas accessible by roads tend to be more supportive and less competitive with respect to other Aboriginal communities in Ontario. There exists a sense of "oneness", an identification as Aboriginal first, and a tribe or Band second. This allows for open lines of communication between groups and softens the impact of geographical

isolation. There appears to be a genuine concern among Aboriginals in the more stable communities for those that are "lost".

In Manitoba however, this does not appear to be the case, especially in the remote northern areas (possibly due to the greater number of remote communities). Most of the communities in the north seem to identify first with their family unit, next with their community(reservation) and finally with their "Indianness". There is a substantial amount of rivalry between both families and communities, effectively cutting off any lines of communication. Thus, aid and support are denied to those who request it.

The solution then, seems to be reflected in terms of cooperation. Factors such as economic disparity and culture conflict could effectively be diminished if Aboriginal peoples united in their efforts at recovery. There are individuals in every community who recognize the need for unification, however, they often do not have the strength and power to stand alone.

In addition, the Canadian criminal justice system should continue its efforts at reform. Although reforms at present represent little more than band-aid solutions to immediate problems, the immediate problems still must be addressed. Reforms along the lines of community based policing and sensitive courts ameliorate communications between Aboriginals and Non-Aboriginals. This too is important in that all Canadians realize that both Aboriginals and the non-Aboriginal majority must maintain good relations. Yet narrow single objectives must not be viewed as long term solutions in that without resolving contributory issues, the implementation of these objectives will do little in correcting the general

problem of Aboriginal overrepresentation within the Canadian criminal justice system.

In conclusion then, culture conflict, geographic isolation and economic disparity are all factors leading to the overrepresentation of Aboriginals within the Canadian criminal justice system. It is also evident that these factors must be addressed together for reforms to be successful on a long term basis. However, it is also recognized that Aboriginal communities are diverse in terms of culture, economic disparity and their degrees of isolation. Thus, it is necessary for Aboriginal peoples to unite with a single goal of reform from within. Only in this way will they have the strength to repair their shattered future.

APPENDIX: A

Major Report Findings/Recommendations Regarding Aboriginal Justice

Royal Commission on the Donald Marshall, Jr., Prosecution, Findings and Recommendations, vol.1. (Nova Scotia, 1989).

Findings:

- The criminal justice system failed Donald Marshall Jr. at every point from his arrest and conviction up to and beyond his acquittal by the Supreme Court of Nova Scotia.

- This miscarriage of justice could have been prevented if those involved had displayed professional and/or competent behaviour in discharging their responsibilities.

- The fact that Marshall was Aboriginal contributed to the miscarriage of justice.

Selected Recommendations (total=82):

- The federal and provincial governments should establish an independent review mechanism to facilitate the reinvestigation of alleged cases of wrongful conviction.

- A community-controlled Native Criminal Court, a Native Justice Institute and a tripartite forum should be established to mediate and resolve outstanding issues between the Micmac and the provincial and federal governments.

- The Police Commission should be provided with sufficient resources to enable it to fulfill properly the leadership, training, information and assessment roles that constitute its mandate.

- The RCMP and municipal police departments should recruit more members of visible minority groups.

- Police departments should develop outreach programs and liaison roles to provide members of visible minorities with greater access to and more positive interaction with the police.

Report of the Aboriginal Justice Inquiry of Manitoba. Two volumes. (Winnipeg: Queen's Printer, 1991).

Findings:

- The justice system was insensitive and inaccessible and had failed the Aboriginal people of Manitoba on a massive scale.

- Incremental changes to the justice system would be insufficient to address the current problems. The only appropriate response to the systemic problems inherent in the existing system as it relates to Aboriginal peoples is the establishment of separate Aboriginal justice systems.

Selected Recommendations (total=293):

- Federal and provincial governments should recognize the right of Aboriginal people to establish their own justice systems as part of their inherent right of self-government. Further, these governments should assist Aboriginal people to establish Aboriginal justice systems according to the wishes of the communities.

- The establishment of proper court facilities in Aboriginal communities and improvements to circuit court services to ensure that all the matters in the docket are dealt with in one visit.

- Increased use of sentencing alternatives for Aboriginal people; and amendments to the Criminal Code to provide that cultural factors be taken into account in sentencing.

- An emphasis on community policing approach in Aboriginal communities.

- Establishment of employment equity programs to achieve greater Aboriginal representation.

- Strengthening and review of cross-cultural education programs.

- The establishment of an Aboriginal Justice Commission, the mandate of which would include monitoring and assisting government implementation of the recommendations of this Inquiry.

Justice on Trial: Report of the Task Force on the Criminal Justice System and Its Impact on the Indian and Metis People of Alberta. Edmonton: Government of Alberta, 1991.

Findings:

- The criminal justice system in Alberta had become too centralized, too legalistic, and too removed from the communities it intended to serve.
- Aboriginal communities are unable to identify with this kind of system, and the system itself cannot achieve its intended objectives.
- There is an absence of communication between Aboriginal peoples and all levels of service providers within the justice system; this lack of communication constitutes on the most serious flaws in the justice system.

Selected Recommendations (total=340):

- The need for increased communication/liaison among and between Aboriginal communities or organizations, police agencies and government departments.
- The need for increased and enhanced cross-cultural training for staff within the criminal justice system.
- The need to increase the number of Aboriginal people employed within the criminal justice system.
- The need to develop custodial alternatives and options for remanded Aboriginal accused and sentenced Aboriginal offenders.
- The need to increase elder involvement in the criminal justice system.
- The need to expand the availability of alcohol and drug treatment programs.
- The need to expand Aboriginal community-based resources and Aboriginal community involvement in criminal justice system problem identification and resolution and program development and delivery.
- The need to increase public education regarding Aboriginal issues and to increase Aboriginal education regarding the criminal justice system.

Report of the Saskatchewan Indian Justice Review Committee. (Regina: 1992).

Findings:

- A number of studies have been done regarding Aboriginal justice yet despite this there has been a lack of any significant progress in the implementation of those studies' recommendations.

- Mandate: To examine ways to make changes within our present criminal justice system, and to encourage expansion of the positive changes already under way, resulting in a system of justice that is more fair and equitable to Indian people.

Selected Recommendations

- Increasing the level of Aboriginal access to and participation in the formulation and delivery of young offender programming, especially mediation/diversion programming.

- Encouraging the participation of elders in young offender program delivery particularly cultural and spiritual teaching and counseling.

- That police services implement employment equity programs to achieve Aboriginal participation equivalent to Aboriginal proportion of the population.

- The establishment of an Aboriginal liaison/cultural relations officer position within the Saskatchewan Police Commission.

- The establishment by federal and provincial government departments, in collaboration with Indian and Metis organizations, of a province-wide Aboriginal court worker program.

- The establishment of culturally appropriate mediation/diversion/reconciliation programs that embody a holistic approach to offender rehabilitation.

- That greater use be made of Aboriginal justices of the peace, especially in the North, to hear matters like bail applications, motor vehicle offences and minor criminal offences.

APPENDIX: B

A Cross-Section of Aboriginal Justice Programs
Initiatives Within the Criminal Justice system

Program	Program Description
Native Courtworker Program	Counseling and referral services for Natives accused of offences. In all provinces and territories except Sask., N.S., N.B. & P.E.I.
Native Spirituality Program	Spiritual and cultural guidance to inmates provided by Native elders in institutions throughout Canada.
Court Interpreters Program	Native language interpreter services for accused persons in 50 Alberta Communities.
Programs for Aboriginal Inmates	Cultural, spiritual, life skills, literacy and counseling programs for Aboriginal male and female inmates in Saskatchewan.
Wilderness Camps	Culturally responsive residential services provided to Native young offenders in 2 Camps in Ontario.
Native Elders Visitation Program for Young Offenders	Spiritual and Cultural guidance provided by Native Elders to Native young offenders in Alberta.
Native inmate Liaison Worker Program	Counseling and discharge planning provided by Aboriginal workers to Native offenders in Ontario.
Dene Tha Native Youth Service Center	Youth attendance centers providing a sentencing option on remote reserves in Alberta
Native Programming at Whitehorse Correctional Center	Native cultural and spiritual programming.

Native Brotherhood/Sisterhood Program	Native awareness activities and cultural events organized for adult offenders in 8 Alberta correctional centers.
Conditional Release Services	Access to Aboriginal halfway houses provided in Vancouver, Edmonton, Winnipeg, Sudbury, and Halifax.
Native Probation Supervision Program	Supervision and counseling of Native persons on probation by Native workers in Alberta.
Programs to Increase Native Representation in the Criminal Justice System	
RCMP Special Constable Program*	Policing by Indian people under the supervision and training of the RCMP. In all provinces and territories except Quebec, Ontario and New Brunswick.
Legal Studies For Aboriginal People	Financial assistance offered through the Dept. of Justice to Native people attempting to enter the legal profession.
Native Justice of the Peace Appointments	The services of Native Justices of the Peace are sought to increase Native involvement in Alberta Provincial Courts.
First Nations Policing Arrangements Program	Indian policing service for the residents of 67 First Nations in Ontario, currently administered through OPP.
Native Criminal Justice Studies Program	A certificate program preparing Native students in Vancouver for employment in the criminal justice system.
Native Special Constable Training Program	A three week training program for Native Special Constables in Alberta.

Native Human Justice Program	A two year course developed in conjunction with Correctional Services of Canada to train Native students in Sask. for employment in corrections.
Ontario Indian Special Constable Program	OPP sponsored training and supervision of Indian constables on reserves.
Native Policing Program	Native Special Constables are actively recruited by the RCMP in NWT, to become regular members of the force.
Policing of Reserves Adjacent to Municipalities Program	Provides for Indian policing on reserves within/adjacent to municipal boundaries, with support of municipal police in B.C., Ont., N.B., and N.S.
Grierson Community Correctional Centre	A correctional centre in Edmonton staffed and operated by Native personnel
Auxiliary Constable Program, Yukon	Offers 8 weeks employment to Native students in their home community to provide career exposure to police work.
Cross-Cultural Training Programs	
RCMP Cross-Cultural Training Program	Cross cultural training of officers at a recruit level on an in-service basis. In all provinces and territories except Ontario and Quebec.
Western Judicial Education Centre	Education and discussion of the social context of judicial decisions as they relate to Native people and the law. For justice professionals in B.C., Alta., Sask., Man., NWT and Yukon.
Cross-Cultural Awareness Program	Two-day awareness course offered to justice professionals in Alberta.

Northern Justice Education Forums	Maintenance of a resource centre organization of an annual conference to provide a forum for Northern and Native justice issues.
Native Courtworker program	In addition to direct service to Native offenders, this program seeks to enhance the awareness of Native culture and socio-legal conditions among justice administrators.
Ontario Native Council on Justice	Aids the development of justice policy, programs and research pertaining to Aboriginal people.
Cross-cultural Awareness Training Program	Two-day sessions offered to correction workers in Sask. to provide awareness of diverse cultural backgrounds.

Initiatives Implemented by Aboriginal Communities

Dakota Ojibway Tribal Council Police Program	Indian policing services for 8 Manitoba reserves.
Special Band Constable Program	Band controlled policing of civil matters to supplement RCMP on reserves. In all provinces and territories except B.C., Ont., and NWT.
Community Service Work Supervision	Band Sponsored Community Service Orders in Northern B.C.
Amerindian Police Program	Indian -delivered policing services for 23 Quebec reserves.
Crime Prevention Coordinators: Blood Tribe and Yellowhead Tribal Council, Alberta	Crime prevention coordinators selected by the band and council.
Dakota Ojibway Probation Services Program	Tribal council-supervised probation orders and community correctional programs on various Manitoba reserves.

Quebec Aboriginal Police Program	Transfer of policing authority to 23 Aboriginal communities pursuant to the James Bay and Northern Quebec Agreement
Counseling/Supervision/Substance Abuse Education Program	Education, supervision and counseling services provided to Native offenders by band councils throughout Ontario.
St. Teressa Point Indian Government Youth Court System	Indian court system established for young offenders on the St. Teressa Point reserve in Manitoba.
Community Holistic Circle Healing	A Native healing program for sexual abuse offenders prior to court appearances. In 4 Manitoba Native communities.
Hobbema Four Nations Police Service	Indian policing service for 4 Alberta reserves.
Blood Tribal Police Force Program	Native peace officer services for the Blood Reserve in Alta.

Source: Department of Justice Canada, National Inventory of Aboriginal Justice Programs, Projects and Resea Services, 1990. found in First Nations: Race, Class and Gender Relations edited by Vic Satzewich and Terry V 213.

APPENDIX C: CASES

APPENDIX (C-1): J. J. HARPER

The shooting of J.J. Harper is a clear example of how racist stereotypes can become institutionalized in the minds of those who are closeted in a atmosphere of racism. Harper, a senior official in a Manitoba Aboriginal organization, was stopped on a Winnipeg street by Constable Robert Cross who was searching for two suspected car thieves. Several factors suggest that Harper was confronted by police specifically because he was Aboriginal. First, it is obvious that he did not bear any physical resemblance to the descriptions of the suspect which were broadcast by the police.[223] Second, evidence was uncovered to suggest that Cross was aware that the suspected car thieves had already been taken into custody by other officers when he stopped Harper.[224]

> Cross [the officer involved] for one reason or another, ignored other particulars of the description of the suspect, seizing on the word 'native'. He stopped the first Aboriginal person he saw, even though that person was a poor match for the description in other respects and a suspect had already been caught... Racial stereotyping motivated the conduct of Cross. He stopped a "native" person walking peaceably along a sidewalk merely because the suspect he was seeking was native.[225]

---

223 In fact, the differences could not have been greater. Harper was overweight and in his mid-forties, whereas the suspects were describes as "slim" teenagers.

224 Hamilton A.C. & C.M. Sinclair, Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People, Vol.I. p. 94.

These factors underline the point that many police officers hold the view that all Aboriginal people are alike, and are probably guilty of something and thus should be randomly questioned on the basis of a generalized suspicion. The day following Harper's death, the police department exonerated Cross despite a multitude of unanswered questions and discrepancies. Although Cross maintained that Harper had been shot when he attempted to grab his (Cross') service revolver, the fact that the Winnipeg Police failed to check the conflicting evidence before exonerating Cross suggests that they felt that the death of an Aboriginal leader did not warrant an extensive investigation or immediate action. Although Robert Cross is no longer on active duty with the Winnipeg Police, he has never faced criminal or internal disciplinary charges for his role in Harper's death.

APPENDIX (C-2): HELEN BETTY OSBORNE

The case of Helen Betty Osborne illustrates how community indifference can interact with racist attitudes held by the police. The racist atmosphere in this case was broadly based in the community, such that the unsolved rape and murder of a young Aboriginal woman failed to elicit much public concern.[226] Helen Betty Osborne was abducted and brutally murdered near The Pas, Manitoba, in November 1971. She was a 19 year old high school student originally from the Norway House Indian Reserve. Lee Colgan, Frank Houghton, Dwayne Johnston and Norman Manger forced Osborne into their car and assaulted her. Despite her screams and

---

226 In comparison, the public outcry over the abduction and murder of Christian French in Ontario serves to illustrate the levels of concern over a similar incident involving a white woman.

attempts to escape, Osborne was taken to a cabin belonging to Houghton's parents at Clearwater Lake. After being stripped, she was viciously beaten, and stabbed more than 50 times with a screwdriver. Her face was smashed beyond recognition. Her body was then dragged into the bush and her clothes were hidden.

The Royal Canadian Mounded Police investigators concluded that the four young men were involved in the death within seven months of the murder. Many people in the town of The Pas also learned the identity of those responsible within a very short time after the murder but chose to do nothing about it. Indeed, it became common knowledge in the town that the four men had committed the murder but "...because Osborne was an Aboriginal person, the townspeople considered the murder unimportant."[227] The RCMP failed to lay charges in the murder and it was not until 16 years later that Johnston and Houghton were charged. Colgan and Manger were never charged, and ultimately only Houghton was convicted.

In their investigation of Osborne's death, the Aboriginal Justice Inquiry concluded that racism played a large role in both the community's apathy toward the situation and in the lack of police interest demonstrated by the 16 year delay in bringing the case to trial. Although the RCMP claimed that they had lacked sufficient evidence to charge the men, their lack of interest is evidenced by the fact that they simply dropped their investigation when the suspects refused to talk to them. This was clearly preposterous, since suspects frequently refuse to cooperate with the police and this rarely stops a professional police force from pursuing a murder investigation. It is significant that, when media

---

227 Aboriginal Justice Inquiry Report, Vol I., p. 3.

and political pressure finally forced the reopening of the case 16 years later, they were able to get a conviction on even less evidence than they had in 1971, since one of the key witnesses had died.

The RCMP's lack of interest in pursuing the case is further evidenced by their failure to lay lesser charges against the other suspects, a practice which is routinely used by police forces as insurance against a possible acquittal on the main charges. The behavior of the RCMP is paralleled by that of the public, many of whom heard the four men bragging about the murder and could have precipitated an early end to the case. Unfortunately, the community was also uncooperative and disinterested.[228] These events demonstrate all too clearly that the RCMP allowed their behavior to be influenced by the racist stereotyping that existed within the community they patrolled.[229] As Hamilton and Sinclair noted in the AJI Report:

> It is clear that Betty Osborne would not have been killed if she had not been Aboriginal. The four men who took her to her death from the streets of The Pas that night had gone looking for an Aboriginal girl with whom to "party". They found Betty Osborne. When she refused to party she was driven out of town and murdered. Those who abducted her showed a total lack of regard for her person or her rights as an individual. Those who stood by while the physical assault took place, while sexual advances were made and while she was being beaten to death showed their own racism, sexism and indifference. Those who knew the story and remained silent must share their guilt.[230]

---

228 Ibid., p. 3.
229 Ibid., p. 8.

230 Ibid., p. 98.

APPENDIX C-3: DONALD MARSHALL, JR.

Donald Marshall, Jr. was another aboriginal person who learned how easily racism and racist stereotypes can lead to misfortune. Marshall spent eleven years in prison for the 1971 murder of Sandy Seale in Sydney, NS. Marshall maintained his innocence throughout the eleven years and pressed his friends to keep searching for the real murderer of his friend Sandy Seale.[231] The problem started when Marshall and Seale went for a walk in Wentworth park in Sydney on the night of May 28, 1971. While in the park Marshall and Seale got into an argument with Roy Ebsary and Jimmy MacNeil who were also in the park. Ebsary, having been mugged in the past, drew a knife and stabbed Seale in the stomach and slashed Marshall on the left forearm. Frightened, Marshall fled and MacNeil and Ebsary left the park to go home. Seale was found by a couple on their way home from a local dance, and Marshall returned to the scene, accompanied by a youth named Maynard Chant whom he had met on a street across from the park. Police and an ambulance were called and Seale was taken to hospital where he died.

Initially, Marshall was not a suspect in the case. He was taken to hospital by the police, where he received stitches to close his wound. He gave a brief description of the assailants to the police and was then allowed to go home.[232] It was after this point that racism began to play a role in the proceedings of the case. Marshall spent all of the following

---

[231] Marshall's actual relationship with Sandy Seale is ambiguous. Some reports indicate they were friends, others maintain they were just aquaintances.

[232] Harris, Michael, Justice Denied: The Law Versus Donald Marshall (Toronto: Totem Books, 1986), p. 41-51.

Saturday and most of Sunday at the police station assisting the police. On one of his trips back to the Membertou Reserve where he lived, Marshall repeated his story to an acquaintance named John Pratico. Later, when questioned by police, both Pratico and Chant later stated that they had actually been at the scene when the murder took place.[233] The first statements taken from Pratico and Chant tended to corroborate Marshall's account of the incident. These statements, however, were not used in the prosecution's case, and apparently were not known to the defence. John MacIntyre, Chief of Detectives for the Sydney police, became convinced that Marshall was the murderer, and coerced both Chant and Pratico into charging their stories and giving statements implicating Donald Marshall.[234]Although the two statements contained a number of mutually contradictory assertions, and there was no other evidence on which to base a charge, MacIntyre presented these "facts" to the Crown Prosecutor, Donald C. MacNeil, and was authorized to obtain a warrant for Marshall on a charge of second degree murder. The murder weapon was never found and no evidence of motive for the stabbing was ever offered.[235]

---

233 Ibid., pp. 57-67.

234 In fairness to Detective MacIntyre, part of his reason for disbelieving Chant and Pratico's original statements was the discrepancies between their stories. These discrepancies were because neither man had been present at the crime and were basing their statements on separate accounts given to them by Marshall. MacIntyre, however, was unaware of this at the time. However, there was also considerable evidence indicating that Detective MacIntyre, may have influenced the testimony of Chant and Pratico based on his previous experience with Marshall. Marshall was known as a trouble maker who frequented the park on a regular basis, often begging or threatening individuals for money. This, in conjunction with the community's view of Natives being drunkards, may have led MacIntyre to assume Marshall's guilt despite the limited evidence.

235 Justice Denied. Ibid.,pp. 94-95.

On November 2, 1971, Marshall was tried before a judge and jury, and convicted on the basis of the eye-witness testimony of these teenagers. He was sentenced to life in prison and taken to Dorchester Penitentiary in New Brunswick.[236] However, within a few days of the conviction, Jimmy MacNeil informed the police that he had been in the park with Ebsary on the night of the stabbing, and named Ebsary as Sandy Seale's assailant. A brief RCMP investigation of MacNeil's allegations discounted his claim and Marshall's conviction was sustained on appeal in late November 1971 without Marshall's counsel ever learning of the new evidence.[237]

Marshall continued to maintain his innocence and another investigation was finally commenced in 1982 after Marshall had learned the name of the real murderer from a friend. This time the RCMP determined that Chant and Pratico had given perjured testimony at Marshall's trial under pressure from Detective MacIntyre. Following this investigation, Marshall was exonerated and charges were brought instead against Ebsary.[238] The interesting aspect of this chain of events is that he was sentenced to only three years in prison, which the Nova Scotia Court of Appeal reduced to one year in 1986. This lenient treatment of a white adult stands in stark contrast to the life sentence handed down to Marshall when he was a juvenile.[239]

---

236 Ibid., p. 129.

237 Ibid., pp. 234-240.

238 Ibid., pp. 309-344.

239 Royal Commission on the Donald Marshall, Jr., Prosecution: Findings and Recommendations, Vol.1, (Halifax: Province of Nova Scotia, 1989), p. 1.

Catharine Crow
297 Carlton St.,
St. Catharines, Ontario.
L2N 1C1
May 20, 1994.

APPENDIX: D

Dear:

I am a graduate student at Brock University in St. Catharines, Ontario. I am presently in the process of researching the flaws in the Canadian Criminal Justice system as it pertains to Aboriginal peoples.

It has been generally acknowledged that Canada's criminal justice system has some major flaws particularly with respect to its application to various ethnic subgroups. Aboriginal Canadians are one subgroup particularly sensitive to problems in our system as reflected in their disproportionately high rates of criminality and incarceration. Over the past 50 years many programs have been developed and recommendations have been made to alleviate the tensions Natives find within the system however, the situation today is essentially the same. Native peoples are still over-represented within the system and the solutions that have been brought forward have had little success in stemming their flow into the system.

It is the purpose of the enclosed questionnaire to address these issues. The questionnaire is designed on the premise that the factors which lead to Aboriginal over-representation within the system tend to fall into three categories, structural (referring to isolation and the subsequent restrictions this places on access to services), economic (which is at least in part the consequence of political interactions and is often reflected in connection of substance abuse), and cultural issues (which tend to lead to massive misunderstanding and discrimination and is reflected in interactions with police and behavior in courts). To date, the most concerted efforts on behalf of the Canadian government and researches has been in the field of culture conflict. This phenomenon is basically the result of the fact that cultural idiosyncrasies are easily observed within the system and a sound contrast in cultural norms and views of justice can be identified. It is my argument however that culture conflicts are only one piece of the puzzle and that in order to evaluate the success of reforms that have been either initiated or proposed all three issues must be considered together.

Please find enclosed two questionnaires, one for you to personally fill out and one other for you to possibly have filled out by a member of your community. Also enclosed are self-addressed stamped envelopes for the return of the questionnaires upon their completion.

I understand that you are a very busy person however I would greatly appreciate any assistance you could give me with regard to my research. Please feel free to contact me if you have any questions or comments with respect to my research. Thank-you very much.

Sincerely,

Catharine Crow
Brock University
Department of Politics (Judicial Administration)
Phone (905)935-6783
Thesis Supervisor: Dr. Carl Baar
Department of Politics (judicial Administration)
Phone (905) 688-5550 Ext. 3922

APPENDIX: E
Questionnaire

Research Thesis: Over the past 50 years many recommendations have been put forward in an attempt to make the Canadian Criminal Justice system more sensitive to Aboriginal needs. It is my contention that for Justice Reforms to be successful, it is necessary to satisfy three criteria:

-Structural difficulties (problems re: isolation),
-Cultural differences (culture conflict),
-Financial needs (consistent funding).

Please note that all information is confidential and no names will be used without specific authorization.

May I use your name in any publication of the materials I produce? ☐ yes ☐ no

If yes, your name is _____,

your town or community is _____.

POLICING:

1) Do you have community based policing in your area?
☐ yes ☐ no
2) Are the police that service your community exclusively Aboriginal?
☐ yes ☐ no
3) Are exterior police (OPP or RCMP) stationed in your community?
☐ yes ☐ no

4) Please write a short description of your impressions of the quality of police service in your area. Include-your views of Native constables and/or OPP/RCMP constables (no names need be given).

-Do native constables treat community members different from "White" constables? Why do you think this is so?
-Do you feel comfortable in calling the police when problems come up? If no, how do you feel?

_____
_____
_____
_____

5) How do you think policing could be improved in your area?

_____
_____
_____
_____
_____

6) Do you feel that being isolated in a remote community effects the service you receive from Police? How ?

_____
_____
_____
_____

7) Are your Aboriginal Police Officers/Peace Keepers paid? ▯ yes ▯ no

How are they chosen?_____

8) Who pays them ▯ OPP (Ontario Provincial Police)
▯ RCMP (Royal Canadian Mounted Police)
▯ Community Band Council
▯ Don't Know

9) Is their wage and status the same as the Provincial Police or the RCMP ?
▯ yes-same ▯ no-more ▯ no-less ▯ don't know

ECONOMIC CONSIDERATIONS:

10) Do all your homes have running water? ▯ yes ▯ no
11) Do all your homes have hydro? ▯ yes ▯ no
12) Do all your homes have telephones? ▯ yes ▯ no

14) What is the average cost of: A Quart of Milk $_____
A litre of Coke $_____
A can of Apple Juice $ _____

15) Is alcohol or substance abuse a problem within your community?
▯ yes ▯ no

16) Are there programs within the community to help people with alcohol or substance abuse? If so what are they and who are they run by?

_____

17) Would you say that your community has a high crime rate? ▯ yes ▯ no

18) Who do you feel are responsible for the crimes that occur in your area?
▯ Children (under 12 years of age)
▯ Youth (12 years old to 19 years old)
▯ Young Adults (20 years old to 30 years old)
▯ Adults (over 30 years old)
▯ Other _____

19) Has there been any changes in the Policing of your community over the last 10 years? Has it made a difference? If so how?

_____
_____
_____
_____

20) Do you have any comments or suggestions concerning policing that you may feel would assist me in my research?

_____
_____
_____

COURTS:

1) Do you have a court house or court office in your community?
   ☐ yes ☐ no
2) Does the Judge live in your community or does he fly in to hold trials
   ☐ fly ☐ lives
3) Do Elders or Community members play a role in the trial process?
   ☐ yes ☐ no
4) Do you have an Aboriginal Court worker program in your community?
   ☐ yes ☐ no
5) Has court ever been delayed or canceled due to weather or mechanical problems?
   ☐ yes ☐ no

6) Please estimate how far you must travel to go to court?_____

7) How would you travel to court? ☐ car/truck Estimated cost? $_____
   ☐ boat
   ☐ plane
   ☐ walking

8) Do you feel that the courts treat community members fairly? ☐ yes ☐ no

9) How do you think the courts might serve your community better?

_____
_____
_____

Thank you very much for your help in my research. If you have any suggestions or comments regarding the Administration of Justice for Aboriginal peoples please feel free to attach any information that you feel may be important or helpful. Catharine Crow, Brock University, (905) 935-6783.
Thesis Supervisor: Dr. Carl Baar, Brock University, (905) 688-5550 Ext. 3922.

BIBLIOGRAPHY

Books

Beirne, P and R.Quinney. Marxism and Law .New York: Academic Press, 1982.

Caputo, T.C. et al. Law and Society: A Critical Perspective. Toronto: HBJ, 1989.

Currie, Elliott. Confronting Crime. New York: Pantheon Books, 1985.

Boldt, Menno and Anthony Long. The Quest for Justice. Toronto: University of Toronto Press,1988.

Cardinal, H. The Unjust Society. Edmonton: Hurtig Publishers, 1969.

Deloria, Vine and Clifford Lytle. American Indians: American Justice. Austin: University of Texas Press, 1983.

Engelstad, Diane and John Bird. Nation to Nation: Aboriginal Sovereignty and the Future of Canada, Concord: Anansi Press, 1992.

Frideres, James S. Native Peoples in Canada: Contemporary Conflicts. Scarborough: Prentice-Hall, 1993.

Friesen, John. The Cultural Maze: Complex Questions on Native Destiny in Western Canada. Calgary: Detselig Enterprises, 1991.

Gomme, Ian McDermid. The Shadow Line: Deviance and Crime in Canada. Toronto: HBJ, 1993.

Griffiths, Curt & S.N. Verdun-Jones. Canadian Criminal Justice 2nd Ed. Toronto: Butterworths, 1993.

Hans, Fred M. The Great Sioux Nation. Chicago: Donohue Publishers, 1907.

Harris, Michael. Justice Denied: The Law Versus Donald Marshall. Toronto: Totem Books, 1986.

Horowitz, J. "Fact Finding in the Courts" in Law, Politics and the Judicial System in Canada, edited by F.L. Morton, Calgary: The University of Calgary Press, 1989.

Little Bear, Leroy et al., Pathways to Self-Determination: Canadian Indians and the Canadian State. Toronto: University of Toronto Press, 1984.

Loree, D.J. "Policing Native Communities" in Aboriginal Peoples and Canadian Criminal Justice. edited by R.A. Silverman and M. Neilsen, 1992.

Miller, J. R., Sweet Promises: A Reader on Indian-White Relations in Canada. Toronto: University of Toronto Press, 1991.

Morse, Bradford W., Aboriginal Peoples and the Law: Indian, Metis and Inuit Rights in Canada. Revised Ed. Ottawa: Carleton University Press,1991.

Palys, Ted. Research Decisions: Quanitative and Qualitative Perspectives,Toronto: HBJ, 1992.

Pue, Wesley and Barry Wright in Canadian Perspectives on Law and Society: Issues in Legal History. Ottawa: Carleton University Press, 1988.

Rapoport, Amos, The Meaning of the Built Environment: A Nonverbal Communication Approach. Tucson: University of Arizona Press, 1990.

Richardson, Boyce. Drumbeat: Anger and Renewal In Indian Country. Toronto: Summerhill Press, 1989.

Robertson, Heather. Reservations are for Indians, Toronto: Lorimer, 1991.

Ross, Rupert. Dancing With a Ghost: Exploring Indian Reality. Markham: Octopus Publishing, 1992.

Satzewich, Vic and Wotherspoon, Terry. First Nations: Race, Class, and Gender Relations. Scarborough: Nelson Canada, 1993.

Silverman, Robert and M. Nielsen. Aboriginal Peoples and Canadian Criminal Justice, Toronto: Butterworths, 1992.

West, Donald, Delinquency: Its Roots, Careers, and Prospects. Massachusetts: Harvard University Press, 1982.

Wolfgang, Marvin et al. Delinquency in a Birth Cohort (Chicago: University of Chicago Press, 1972).

JOURNALS

Auger, D. et al. "Crime and Control in Three Nishanwabe-Aski Nation Communities" Canadian Journal of Criminology. 34(1992).

Barsh, R and Henderson, J. "Aboriginal Rights, Treaty Rights and Human Rights: Indian Tribes and Constitutional Renewal," Journal of Canadian Studies.17 (1982).

Boldt, M. "Canadian Native Indian Leadership: Context and Composition". Canadian Ethnic Studies Journal. 12 (1980).

Coyle, M, "Traditional Indian Justice in Ontario: A Role for the Present?". Osgoode Hall Law Journal, 24 (1986).

Coyle, M., "Traditional Indian Justice in Ontario" University of British Columbia Law Review. Special Edition, 1992.

Depew, Robert "Policing Native Communities: Some Principles and Issues in Organization Theory" Canadian Journal of Criminology, 34(1992).

Dyck, N. "Are North American Indians Biochemically More Susceptible to the Effects of Alcohol?" Native Studies Review. 2(1986).

Griffiths, C.T. and Yerbury J.C. "Natives and Criminal Justice Policy: The Case of Native Policing," Canadian Journal of Criminology 26(1984).

Hagan, J., "Criminal Justice and Native Peoples: A study of Incarceration in a Canadian Province", Canadian Review of Sociology and Anthropology, (Special Edition) August (1974).

Hyde, Mary "Servicing Indian Reserves: The Amerindian Police" Canadian Journal of Criminology, 34(1992).

Kaiser, H. A.," The Criminal Code of Canada: A review based on the Minister's Reference" University of British ColumbiaLaw Review, Special Edition, 1992.

La Prairie, Carol "Who owns the Problem? Crime and Disorder in James Bay Cree Communities, Canadian Journal of Criminology, 34 (1992).

Mandamin L. et al., "The Criminal Code and Aboriginal People", University of British Columbia Law Review, (Special Edition), 1992.

Morton, W. L., "The historical Phenomenon of Minorities: The Canadian Experience", Canadian Ethnic Studies, 13-3 (1981).

Nielsen, M.O. "Candian Correctional Policy and Native Inmates: The Control of Social Dynamite," Canadian Ethnic Studies. 22 (1990).

Ponting, J.R. "Conflict and Change in Indian/Non-Indian Relations in Canada: Comparison of 1976 and 1979 National Attitude Surveys", Canadian Journal of Sociology, 9-2 (1984).

Ross, R. "Leaving our White Eyes Behind: The Sentencing of Native Accused". Canadian Native Law Reporter. 3 (1989).

Zimmerman, S. "The Revolving Door of Despair': Aboriginal Involvement in the Criminal Justice System", University of British Columbia Law Review, Special Edition, 1992.

Government Sources

Canadian Charter of Rights and Freedoms, s.15 (1).

Cawsey, Mr. Justice R.A. (Chair)Justice on Trial: An aboriginal perspective on Justice, Report of the Task Force on the Criminal Justice System and its impact on Indian and Metis People of Alberta, Vol.1. Edmonton: Attorney General and Soclicitor General, 1991.

Church, Thomas, Justice Delayed: The Pace of Litigation in Urban Trial Courts. Virginia: National Center for State Courts, 1978.

Clark, Scott, The Mi'kmaq and Criminal Justice in Nova Scotia, Royal Commission on the Donald Marshall, Jr., Prosecution. Province of Nova Scotia,1989.

Depew, Robert, "Native Police in Canada: A Review of Current Issues" Report . Ottawa: Solicitor General of Canada, 1986.

Dumont, James , "Justice and Aboriginal People" in Aboriginal Peoples and the Justice System, Ottawa: Minister of Supply and Services Canada, 1993.

Hamilton A.C. & C.M. Sinclair, Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People, Vol.I. Province of Manitoba,1991.

Hamilton A.C. and Sinclair, C.M., Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People Vol. II. Province of Manitoba,1991.

Law Reform Commission of Canada, Report: Ministers Reference: Aboriginal Peoples and Criminal Justice ,(Report 34, 1991).

MacPherson, James C., "Report from the Round Table Rapporteur", Aboriginal Peoples and the Justice System. Ottawa: Ministry of Supply and Services Canada, 1991.

Mandamin, Leonard "Aboriginal Justice Systems: Relationships", in Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues, Ministry of Supply and Services Canada, 1993.

McCaskill, D., Patterns of Criminality and Correction among Native Offenders in Manitoba: A longitudinal Analysis .Saskatoon: Prairie Region Correctional Service of Canada, 1985.

McCaskill, D., Patterns of Criminality and Correction among Native Offenders in Manitoba: A longitudinal Analysis .Saskatoon: Prairie Region, Correctional Service of Canada, 1985.

Metis and Non-Status Indian Crime and Justice Commission,1977 Report. Ottawa: Supply and Services Canada, 1977.

1992 Estimates. Ottawa: Supply and Services Canada, 1992.

Neilsen, E. Improved Program Delivery: Indians and Natives, A Study Team Report to the Task Force on Program Review. Ottawa: Minister of Supply and Services, 1985.

Report of the Saskatchewan Indian Justice Review Committee. Province of Saskatchewan. 1992.

Royal Commission on the Donald Marshall, Jr., Prosecution: Findings and Recommendations, Vol.1. Halifax: Province of Nova Scotia, 1989.

Rudin, Jonathan & Dan Russell, Native Alternative Dispute Resolution Systems: The Canadian Future in Light of the American Past Toronto: Ontario Native Council on Justice, 1991.

Statistics Canada, 1991, Language, Tradition, Health, Lifestyle and Social Issues. "Highlights".

Statistics Canada, 1991, Schooling, Work and Related Activities, Income , Expenses and Mobility.

Statistics Canada, 1991-92, Adult Correctional Services in Canada, Tables 30,11.

Stevens, Samuel "Northwest Territories Community Justice of the Peace Program" Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues.Ministry of Supply and Services Canada, 1993.

Solicitor General of Canada, First Nations Policing Policy. Ottawa: Minister of supply and Services, 1992.

Turpel, Mary Ellen, in Aboriginal Peoples and the Justice System: Report of the National Round Table on Aboriginal Justice Issues. Ministry of Supply and Services Canada, 1993.

Cases:

The Lawyers Weekly: October 15, 1993; Case: R.v.Cheekinew, Sask. Q.B., Grotsky J., (Mar.2/93).

NEWSPAPERS

Winnipeg Free Press, Monday,Aug.16. 1993 pg. B3.

Winnipeg Free Press, Sunday Aug.15,1993 pg. A9.

INTERVIEWS

Interview with Aboriginal in Northern Ontario, May 14,1994.

Interview with Aboriginal Oxford House Reserve, Manitoba, 25 August 1993.

Interview with Aboriginal woman in Northern Manitoba, August 25, 1993.

Interview with Aboriginals in Northern Ontario, May 22, 1994.

Interview with an Aboriginal RCMP constable, Williams Lake, British Columbia, December, 1992.

Interview with Axel, Ministry of the Attourney General, May 2, 1993.?

Interview with Chief Ken Wood, Co-worker of J.J. Harper and Chief of the St.Teressa Point reserve, August 26, 1993.

Interview with Crown Attorney, Northern Ontario, May 13, 1994.

Interview with Dr. Charlie Ferguson, Native Health Care and Abuse coordinator, Expert for police regarding sexual/child abuse, having serviced Northern Manitoba reserves for approx. 20 yrs. Winnipeg, Manitoba, 15 August, August 26,1993.

Interview with Glen Reed, Crown Attorney on the Northern Circuit, August 23, 1993.

Interview with Hon., Alvin Hamilton, Court of the Queen's Bench, Winnipeg, August 26, 1993.

Interview with Jonathan Rudin, Aboriginal Legal Services of Toronto, Community Council Director, April, 1993.

Interview with Judge Howell, Provincial Court Judge servicing the Northern Manitoba Circuit, Thompson, Manitoba, 25 August, 1993.

Interview with Judge Murray Howell, August 18, 1993.

Interview with Judge R. Sortini, General Division Judge, Ontario, May 1994.

Interview with Larry Hodgeson, Crown Attorney Manitoba's Northern Circuit, Thompson, Manitoba, 23 August, 1993.

Interview with Legal Aid Lawyer, In the North, August. 17, 1993.

Interview with OPP, Northern Ontario, May 21, 1994.

Interview with Provincial Court Judge, Northern Ontario, May 21, 1994.

Interview with RCMP constable, Northern Manitoba, August 16, 1993.

Interview with RCMP, Northern Manitoba, August 18, 1993.

Interview with RCMP, Thompson Manitoba. August 16, 1993.

Interview with Superintendent George Watt,RCMP, Thompson, Manitoba, 20 August 1993.

Interviews with Aboriginal Band Constables August 25, 1993.

Interviews with band constables and police in Northern Manitoba.

*Observation in Court August 18, 1993.

*Returned Questionnaires from Northern Ontario.